

SECOND DIVISION

[G.R. No. 111212. January 22, 1996]

**GEORGE ANDERSON, *petitioner*, vs. THE LABOR RELATIONS COMMISSION,
PACIFIC BUSINESS VENTURES INC. and KAMAL AL BITAR,
respondents.****D E C I S I O N****MENDOZA, J.:**

This is a petition for certiorari to annul and set aside the decision dated January 25, 1993 of the National Labor Relations Commission (First Division) in NLRC NCR Case No. 001931-91, reversing the decision of the Philippine Overseas Employment Administration and dismissing petitioners complaint for illegal dismissal.

The facts are as follows:

Petitioner was recruited by respondent Pacific Business Ventures, Inc. to work as foreman of the Fiberglass Division of the Bitar Metal Fabrication Factory in Damman, Kingdom of Saudi Arabia. The period of employment was two (2) years, starting February 16, 1988, and the salary was SR1,000.00 a month, plus food allowance of SR200.00 a month, or the equivalent of US\$320.00 in all.

After nine (9) months on the job, petitioner was told on November 6, 1988 by the proprietor and general manager, respondent Kamal Al Bitar, that his services were being terminated. Four days after his lay off, petitioner returned to the Philippines.

On March 30, 1989, petitioner filed with the POEA a complaint for illegal dismissal, recovery of salary differential, vacation leave pay, refund of transportation expenses and recruitment violations.

Private respondents denied petitioners allegations. They alleged that petitioner had been dismissed for loss of confidence.^[1] In a supplemental position paper filed by them on July 6, 1989, private respondents claimed that petitioner lacked the leadership and motivation required of the head of the fiberglass division.^[2]

After due hearing, the POEA found petitioner to have been illegally dismissed and, for this reason, ordered private respondents to pay the balance of petitioners salary for two years and salary differential. The dispositive portion of the POEAs decision reads:

WHEREFORE, premises considered, judgment is hereby rendered ordering respondents PACIFIC BUSINESS VENTURES, INC. and KAMAL AL BITAR OF BITAR METAL FABRICATION to pay jointly and severally complainant GEORGE ANDERSON the following (sic) amounts:

1. SEVEN THOUSAND EIGHT HUNDRED SEVENTY FIVE US DOLLARS (US\$7,875.00) or its equivalent in Philippine Currency at the time of actual payment, representing complainants salaries corresponding to the unexpired portion of his contract of employment and
2. ONE THOUSAND EIGHT HUNDRED FORTY FIVE US DOLLARS (US\$1,845.00) or its equivalent

in Philippine Currency at the time of actual payment, representing complainants salary differential for nine (9) months.

All other claims are hereby dismissed for lack of merit.

SO ORDERED. ^[3]

On December 10, 1990, private respondents appealed to the NLRC. On January 13, 1992, they filed a supplemental appeal memorandum and, on June 29, 1992, a second supplemental appeal memorandum, submitting an affidavit of respondent Kamal Al Bitar in which he stated:

- a. He is the proprietor and General Manager of respondent Bitar Metal Fabrication Factory thereafter called the Company.
- b. On February 1988 or thereabouts, he hired complainant-appellee George Anderson as Supervisor of the Companys fiber glass-section.
- c. During the 3-month probationary period of Mr. Andersons employment contract, Mr. Bitar observed that *Mr. Andersons performance as Supervisor was miserable in that he had no leadership ability* and that he relied too much on his subordinates in the performance of his work in the fiber glass section.
- d. After the said probationary period, Mr. Bitar discussed with Mr. Anderson his miserable performance and gave the latter a chance to improve.
- e. However, in the course of Mr. Andersons employment with the Company, *the latter had shown his lack of technical know-how* required for his position, and worse, he exhibited a negative attitude toward his work.
- f. By reason of Mr. Andersons miserable performance as well as his *negative work attitude, the Companys trust and confidence in him began to erode*. Mr. Andersons services could have been terminated for just causes, i.e., *miserable performance and loss of trust and confidence*. However, the Company decided to preterminate his employment contract pursuant to Section E of his Employment Contract by granting him separation pay, in lieu of the 30-day notice. The said section reads as follows:

The employer may terminate the contract on other grounds by giving prior thirty (30) days written notice or in lieu thereof termination pay equivalent to salary for 30 days for every year of service.

- g. Lastly, the Company likewise paid Mr. Anderson other amounts in accordance with his employment contract and the Saudi Arabian Law.

(Italics supplied)

On January 25, 1993, the NLRC set aside the decision of the POEA and dismissed petitioners complaint. Petitioner moved for a reconsideration, but his motion was denied by the NLRC on April 22, 1993. Hence, this petition.

Petitioner contends that the NLRC gravely abused its discretion in:

- (1) Admitting in evidence the affidavit of private respondent employer which is not only self-serving and a patently fabricated documentary evidence but also it was presented for the first time on appeal.
- (2) Holding that petitioner never refuted the factual allegations surrounding the loss of confidence of the private respondent employer in the petitioner-complainant.

- (3) Not upholding that the finding of the POEA that the dismissal of the petitioner from the service for alleged loss of confidence was illegal.
- (4) Failing to squarely pass upon the issues raised by the petitioner in his motion for reconsideration of the NLRC decision allegedly because the motion failed to raise palpable or patent errors of the public respondent NLRC.

As a preliminary matter it may be stated that while generally the findings of fact of the NLRC are given great weight in this Court, the rule will not abide where the substantiality of the evidence requires a reversal or modification. Here the question is whether the evidence submitted by private respondents is substantial to support petitioners dismissal. In reversing the decision of the POEA,

which found that petitioner had been illegally dismissed, and instead dismissing petitioners complaint, the NLRC gave undue weight to petitioners failure to refute the allegations in the affidavit of Kamal Al Bitar, concluding that petitioner was dismissed because of loss of confidence by the management.

There is no dispute that loss of confidence constitutes a just cause for terminating an employer-employee relationship.^[4] Proof beyond reasonable doubt is not even required to terminate employment on this ground.^[5] But the loss of confidence cited in this case to justify the dismissal of petitioner is not based on any act of dishonesty or disloyalty^[6] on the part of petitioner but on alleged lack of leadership, and technical know-how and on the allegation that worse, he exhibited a negative attitude toward his work.

Kamal Al Bitars affidavit cites no specific acts or omissions constituting unsatisfactory performance by petitioner of his work.^[7] What qualities of leadership and technical knowledge petitioner was required to possess as supervisor of a fiberglass company has not been specified. On the contrary, what is established is that before petitioner was hired, Kamal Al Bitar required him to demonstrate his knowledge and skill and it was only after he had done so was he hired for the job of supervisor of the fiberglass division. In fact petitioner had already been on the job for nine months when Kamal Al Bitar terminated petitioners employment. On the other hand, what negative attitude petitioner had shown toward his work is anybodys guess. There are no specific instances cited to show petitioners negative attitude toward his work.

Indeed, Kamal Al Bitars affidavit contained nothing but general, vague and amorphous allegations of petitioners unfitness for the job. The NLRC, while citing the affidavit, did not specify why in its opinion petitioners dismissal was justified. Instead it stressed petitioners failure to answer the affidavit. The NLRC did not consider the affidavit by evaluating its merit.

That the affidavit was submitted by private respondents only on appeal, without any explanation why they could not have, submitted it earlier (it was actually submitted only in their *second* supplemental memorandum on appeal) indicates that it was nothing but an attempt by private respondents to give verisimilitude to their even more general allegation in the POEA that they dismissed petitioner for loss of confidence and for his lack of leadership and motivation for the job.

It is true that in the cases^[8] cited by private respondents this Court upheld the power of the NLRC to admit on appeal additional evidence to show just cause for dismissal. In those cases, however, the delay in the submission of the additional evidence was explained. What is more, the additional evidence *clearly* proved the employers allegation of just cause for dismissing the employee. In the first case,^[9] the affidavits of two witnesses corroborated the entry in the ships log book that the employee, who was a boatswain on an interocean vessel, was guilty of assaulting another crew member. In the second case, *Columbia Dev. Corp. v. Minister of*

Labor,^[10] the audit report of a certified public accountant clearly showed that the company suffered serious business losses. In the third case cited, *Bristol Laboratories Employees Ass n v. NLRC*,^[11] the additional evidence also clearly showed that the employee was guilty of withdrawing pharmaceutical products from outlets for which he issued bouncing checks.

But in the case at bar, not only was the delay in the submission of Kamal Al Bitars affidavit not explained but the affidavit belatedly submitted does not show that petitioners dismissal was indeed for a just cause. To repeat, the only reason the NLRC had for reversing the decision of the POEA is the fact that petitioner failed to answer the affidavit. But there was a reason for petitioners failure to do so. It was because a copy of the affidavit was served on him instead of his counsel. Unaided by counsel, he was unable to refute the allegations in the affidavit. The service of the affidavit was contrary to the Rules of Procedure of the NLRC which require that if a party is represented by counsel or an authorized representative, service must be made on his counsel or representative. Thus, Rule III, 3 of the Rules of Procedure provides:

Sec. 3. *Filing of Pleadings.* - All pleadings in connection with the case shall be filed with the appropriate docketing unit of the Regional Arbitration Branch, or the Commission as the case may be.

The party filing the pleading shall serve the opposing party or parties with a copy thereof in the manner provided by this Rules with proof of service thereof. (Emphasis added)

On the other hand, Rule II, 4, to which reference is made, provides:

Sec. 4. *Services of Notices and Resolutions.* (a) notices or summons and copies of orders, resolutions or decisions shall be served on the parties to the case personally by the bailiff or duly authorized public officer within three (3) days from receipt thereof or by registered mail; *Provided* that where a party is represented by counsel or authorized representative, service shall be made on such counsel or authorized representative; . . . (Emphasis added)

Private respondents justify the service on petitioner directly on the ground that this had been done before in the POEA without protest from petitioner or counsel. This alone cannot justify noncompliance by private respondents with the rules. Petitioner cannot be held in estoppel. An element of estoppel is that as a result of a partys representation or omission the other party is misled, in which case it would be inequitable to allow the first party to deny his representation or omission. Here, however, there is nothing to show that private respondents had ever been misled into believing that they could serve the pleadings on petitioner, instead of through his counsel. Private respondents knew that petitioner was represented by counsel. For this reason they should not be allowed to profit from their own disregard of the rule on service of pleadings to the damage and prejudice of petitioner.

Petitioner complains that he was dismissed without being informed of: the cause of his dismissal and without being given prior notice as required by the Contract of Employment which provided:

Sec. E. The Employer may terminate the contract on other grounds by giving a prior 30 days written notice or in lieu thereof, termination pay equivalent to salary for thirty days for every year of service.

On the other hand, private respondents reply that while no prior notice was given to petitioner the latter was given separation pay equivalent to one months pay which He accepted.

Private respondents contention is well taken. The employment contract clearly states that in lieu of prior notice the employee may be given termination pay equal to thirty days pay for every year of service. This is in addition to the payment to him of his salary for the unexpired portion of his contract.

The rule is that an employee cannot be dismissed except for cause as provided by law (*i.e.*, Labor Code, Arts. 282-283) and only after due notice and hearing.^[12] If an employee is dismissed without cause, he has a right to be reinstated without loss of seniority rights and other privileges and to be paid full backwages, inclusive of allowances and other benefits.^[13] If he is dismissed without notice and hearing, although for a just cause, he will be entitled to the payment of indemnity.^[14]

If the contract is for a fixed term and the employee is dismissed without just cause, he is entitled to the payment of his salaries corresponding to the unexpired portion of his contract.^[15] In this case, as petitioners contract was for two years and his dismissal was not for a just cause, he is entitled to be paid his salary for 15 months corresponding the balance of the contract. The grant to him of a termination pay under his employment contract may be considered indemnity for his dismissal without prior notice and hearing.

As the POEA found, petitioners salary should be US\$525.00, as determined in the exit permit granted to petitioner, and not US\$320.00 as paid to him by private respondents. It follows that the termination pay to be given to him, which is equivalent to one month for every year of service, must also be increased by *US\$205.00* as petitioner was paid only US\$320.00.

WHEREFORE, the decision of the NLRC is **SET ASIDE** and that of the POEA Administrator is **REINSTATED** with the **MODIFICATION** that petitioner should be paid the additional amount of US\$205.00 representing the difference between the amount paid as termination pay and his actual monthly salary.

SO ORDERED.

Regalado (Chairman), Romero and Puno, JJ., concur.

^[1] *Rollo*, p. 38.

^[2] *Rollo*, p. 42.

^[3] *Rollo*, p. 49.

^[4] *Hernandez v. NLRC*, 176 SCRA 269 (1989); *Manila Midtown Commercial Corp. v. Nuwhrain*, 159 SCRA 212 (1988).

^[5] *Gatmaitan v. MRR*, 21 SCRA 191 (1967).

^[6] *See Aurelio v. NLRC*, 221 SCRA 432 (1993); *San Miguel Corp. v. NLRC*, 180 SCRA 281 (1989).

^[7] *Cf. A.M. Oreta & Co., Inc. v. NLRC*, 176 SCRA 218 (1989).

^[8] *Bristol Laboratories Employees Association v. NLRC*, 187 SCRA 118(1990); *Columbia Development Corp. v. DOLE*, 146 SCRA 421 (1986) and *Haverton Shipping Limited v. NLRC*, 135 SCRA 685 (1985).

^[9] *Haverton Shipping Ltd. v. NLRC*, *supra* note 8.

^[10] *Supra* note 8.

^[11] *Supra* note 8.

^[12] Omnibus Rules Implementing the Labor Code, Bk V. Rule XIV, 1.

[\[13\]](#) Labor Code, Art. 279.

[\[14\]](#) Aurelio v. NLRC, *supra* note 6; Wenphil Corp. v. NLRC, 170 SCRA 69 (1989).

[\[15\]](#) See Technika Skills and Trade Services, Inc. v. NLRC, 212 SCRA 132 (1992). *Cf.* Haverton Shipping Ltd. v. NLRC, 135 SCRA 685 (1985).