

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
SECOND DIVISION**

**DENNIS A. CHUA,**  
*Petitioner*

*-versus-*

**G.R. No. 146780**  
**March 11, 2005**

**NATIONAL LABOR RELATIONS  
COMMISSION, SCHERING - PLOUGH  
CORPORATION, EPITACIO TITONG,  
JR., DANNY T. YU, and ROBERTO  
TADA,**

*Respondents.*

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**DECISION**

**CALLEJO, SR., J.:**

This is a Petition for Review on Certiorari under Rule 45 of the 1997 Revised Rules of Civil Procedure from the October 31, 2000 Decision<sup>[1]</sup> and January 18, 2001 Resolution of the Court of Appeals (CA) in CA-G.R. SP No. 57722.

The antecedents are as follows:

On June 1, 1995, petitioner Dennis Chua was hired as a Professional Medical Representative by Schering-Plough Corporation (SPC). The petitioner became a regular employee on December 1, 1995, and he was, thereafter, assigned to the Bicol Region. As a Professional Medical Representative, he was tasked to promote SPC and its products to physicians, hospitals, paramedics, including trade and government outlets in his assigned territory.<sup>[2]</sup>

To facilitate his duties as a medical representative, the petitioner was given a Kia Pride vehicle on June 28, 1995.<sup>[3]</sup> Under the company car plan, the petitioner would be entitled to purchase the said car in July 1997, at a price corresponding to ten percent (10%) of the market value at the time of the purchase.<sup>[4]</sup>

One of the petitioner's duties was to submit a Daily Coverage Report (DCR) every Monday, or at least to mail the same to the Field Operations Manager.<sup>[5]</sup> Furthermore, he was required to have "call cards" signed by any of the eighty (80) doctors under his coverage to show that he indeed visited them and handed out promotional items. This system enabled the SPC to know how many doctors the petitioner had visited in a week and the number of call cards he was required to submit.

Meanwhile, respondent Roberto Z. Tada, Field Operations Manager of the corporation for the Bicol Region, noticed that the petitioner filed his DCRs late on two occasions, and in batches at that. Specifically, a batch of DCRs up to January 10, 1997 was filed only on March 13, 1997, while another batch was filed only on March 18, 1997. The petitioner also failed to submit the requisite DCRs for the period covering February 10, 1997 to April 7, 1997. Respondent Tada also found some discrepancies in the DCRs submitted by the petitioner.

On April 6, 1997, respondent Tada confronted the petitioner regarding the said discrepancies. Respondent Tada pointed out that while numerous doctors were listed in some of the DCRs submitted by the petitioner, the call cards supposed to have been signed by them remained blank. Respondent Tada asked the petitioner to explain the discrepancies, but the latter merely replied, "Pagbigyan mo na lang ako, boss. Tulungan mo na lang ako, boss."<sup>[6]</sup> On April 8, 1997, Tada went to the petitioner's residence and confiscated all the

paraphernalia used by the latter for his fieldwork, including the call cards and medicine samples. The car assigned to the respondent was likewise confiscated.

On April 9, 1997, the petitioner filed an application for a “three-day sick leave,” but indicated therein that he was going on leave only for two (2) days, from April 10 to 11, 1997. He claimed that he was suffering from severe diarrhea and with fever.<sup>[7]</sup> However, after the lapse of his applied leave of absence, the petitioner failed to report for work.

Apparently, on April 15, 1997, the petitioner had already filed a complaint for illegal dismissal with the National Labor Relations Commission (NLRC) against the SPC, Eпитacio Titong, Jr. (as President and General Manager), Danny T. Yu (as Division Manager) and Roberto Z. Tada (as Field Operations Manager), seeking the payment of backwages, moral damages, attorney’s fees and other monetary benefits. The petitioner alleged that he was dismissed from employment as early as April 8, 1997 without any just or authorized cause, and without due process. He likewise prayed to be allowed to acquire the car assigned to him under the company car plan.

The summons was received by the SPC on April 17, 1997. Nevertheless, a day before or on April 16, 1997, the petitioner received a telegram<sup>[8]</sup> from the SPC instructing him to report to the office on April 18, 1997 and to see respondent Danny T. Yu who was the Division Manager. The petitioner, however, failed to comply.

On April 18, 1997, respondent Tada sent a Memorandum<sup>[9]</sup> to the petitioner requiring the latter to explain the following matters:

1. No Daily Coverage Report (DCR) submitted from February 10, 1997 up to April 7, 1997;
2. DCRs submitted were very much delayed, example: batch of DCRs up to January 10, 1997 were received 13 March 1997, batch of DCRs up to February 7, 1997 were received 18 March 1997;

3. More than 80 doctors allegedly visited and reported in DCRs covering the period September 1996 up to February 7, 1997 but whose individual doctor's call cards are without the necessary signatures to prove they were visited. Why are these doctors reported as calls in your DCR and samples reportedly issued without MD's signatures or acknowledgment;
4. Why the doctor's call cards have no dates opposite the alleged signatures;
5. Claims for expense reimbursements covering the period February 16, 1997 up to March 31, 1997 without the corresponding DCRs; and
6. You did not report to Mr. D.T. Yu in the office last April 18, 1997 despite the telegram sent to you requiring you to report.<sup>[10]</sup>

The same letter informed the petitioner that he was under preventive suspension effective April 11, 1997 while the case was under investigation.

On May 8, 1997, while the case for illegal dismissal was pending resolution before the arbitration branch of the NLRC, the SPC sent another letter<sup>[11]</sup> to the petitioner, informing him that his employment was terminated effective at the close of business hours of May 6, 1997. The SPC emphasized that the petitioner had been given an opportunity to explain his side, and that he had failed to do so. He was required to immediately turn over to respondent Tada all accounts, property and money in his possession.<sup>[12]</sup>

During the proceedings before the Labor Arbiter, the petitioner asserted that he was not given an opportunity to know the nature of the charges against him, nor a chance to explain his side. He further asserted that respondent Tada forced him to resign on the allegation of late submission of reports, but that he refused and instead filed an application for leave of absence. Respondent Tada then got angry and confiscated all the materials he used as a medical representative. The petitioner explained that his dismissal prevented him from

submitting the DCRs for the period of February 10, 1997 to April 7, 1997.

The SPC alleged, by way of answer to the complaint, that respondent Tada noticed discrepancies and anomalies in the DCRs filed by petitioner, including the late filing thereof in batches, and the failure to submit DCRs for the period of February 10, 1997 to April 7, 1997. Respondent Tada also noticed discrepancies in the doctors' call cards, which were either unsigned, or, if at all signed, did not contain pertinent dates. It alleged that it sent a memorandum to the petitioner requiring him to explain his side, but that the latter failed to do so. The SPC emphasized that the petitioner was dismissed on the ground of gross and habitual neglect of duties.

On September 30, 1998, Labor Arbiter Ramon Valentin C. Reyes rendered a Decision declaring the petitioner's dismissal from employment as illegal. The Labor Arbiter held that the SPC failed to establish any ground for the petitioner's dismissal and ordered the SPC to reinstate him. The dispositive portion of the decision reads:

WHEREFORE, premises all considered, judgment is hereby rendered declaring complainant's dismissal illegal and ordering respondents:

- 1.) To reinstate complainant to his former position as medical representative without loss of seniority rights and other privileges;
- 2.) To pay him full backwages and other monetary benefits from the time his compensation was withheld from him up to the time of his actual reinstatement without deductions for whatever earnings he may have received elsewhere during the period of his dismissal or in the amount of P164,340.00 (Basic pay of P5,600.00 + P3,530.00) In base and out base allowances April 1997 to September 30, 1998 or 18 mos. x P9,130.00 = (P164,340.00);

- 3.) Ordering respondents to deliver to complainant the company car to which he is entitled to under the company car plan, subject to the payment by him of lawful charges; and
- 4.) Ordering respondents to pay complainant the amount of P5,000.00 by way of indemnity and attorney's fees in a sum equivalent to ten percent (10%) of the monetary awards herein made in his favor.

All other claims are dismissed for lack of merit.

SO ORDERED.<sup>[13]</sup>

The Labor Arbiter ruled that the SPC failed to prove any just or authorized cause for the petitioner's dismissal. He also declared that the petitioner was not able to comply with respondent Tada's memorandum requiring an explanation as to the alleged discrepancies, since the SPC had already dismissed the petitioner before he could do so.

Upon motion of the petitioner, a Writ of Execution<sup>[14]</sup> was issued on December 3, 1998, ordering the SPC to reinstate the petitioner to his former position without loss of seniority rights. Pursuant thereto, the petitioner was reinstated in the corporation's payroll as of December 8, 1998.<sup>[15]</sup> Meanwhile, the SPC appealed the decision of the Labor Arbiter to the NLRC.

On October 19, 1999, the NLRC issued a Resolution,<sup>[16]</sup> the dispositive portion of which reads:

WHEREFORE, premises considered, the appeal is partially GRANTED and the Decision dated 30 September 1998 is AFFIRMED only in so far as the award of indemnity is concerned. Accordingly, a new decision is hereby entered finding respondent to have validly dismissed complainant.

SO ORDERED.<sup>[17]</sup>

The NLRC declared that while the petitioner was dismissed on valid grounds, he was not afforded due process. The NLRC ratiocinated that the petitioner was effectively dismissed on April 8, 1997, the date when the car and the other paraphernalia used by him as a medical representative were confiscated; he then no longer had the means to act as such employee of the SPC. It was only several days later when the petitioner was given an opportunity to explain his side. The NLRC concluded that while the petitioner's dismissal was based on a valid ground, he was not afforded due process. Hence, while the NLRC deleted the award for backwages and other monetary awards, it retained the amount of P5,000.00 by way of indemnity in favor of the petitioner.

The petitioner filed a motion for reconsideration of the said resolution, but the same was dismissed.<sup>[18]</sup>

The petitioner sought relief from the CA by way of a petition for certiorari, docketed as CA-G.R. SP No. 57722. The petitioner claimed that his dismissal was without just cause. He alleged that even assuming that his dismissal was for a just cause, the NLRC should have ordered the payment of backwages, and not merely an indemnity award of P5,000.00 based on ineffectual notice of termination. He cited the ruling of the Court in *Serrano vs. NLRC*<sup>[19]</sup> to bolster his claim.

On October 31, 2000, the CA rendered a decision affirming, in toto, the resolution of the NLRC. The CA declared that the NLRC did not commit grave abuse of discretion in finding that the petitioner's dismissal was based on a valid ground. The CA further held that the doctrine in *Serrano* adverted to could not be applied in the petitioner's case as it was not yet in existence at the time the NLRC issued the assailed Resolution.

The petitioner filed a motion for reconsideration which the appellate court denied in a Resolution<sup>[20]</sup> dated January 18, 2001.

Hence, this petition.

The petitioner raises the following as errors in support of his petition:

## I

THE COURT OF APPEALS GRAVELY ERRED, BLATANTLY DISREGARDED THE LAW AND ESTABLISHED JURISPRUDENCE, IN UPHOLDING THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION.

## II

THE COURT OF APPEALS GRAVELY ERRED AND FAILED TO AFFORD PROTECTION TO LABOR IN NOT APPLYING TO THE INSTANT CASE THE DOCTRINE LAID DOWN BY THIS HONORABLE COURT IN SERRANO VS. NLRC, ET AL., G.R. NO. 117040, JANUARY 27, 2000.<sup>[21]</sup>

Anent the first issue, the petitioner contends that considering the respondents' failure to comply with the two-notice statutory requirement, he is entitled to backwages, conformably to the ruling of this Court in Serrano vs. NLRC.<sup>[22]</sup> He asserts that although he was dismissed on April 8, 1997, the ruling of the Court in the said case is still applicable.

In their comment on the petition, the respondents aver that the ruling of this Court should not be applied retroactively as it would violate the constitutional prescription against ex post facto laws.

The petitioner's termination from employment was anchored on the following: (a) gross and habitual neglect; (b) serious misconduct; and (c) willful disobedience to the lawful orders of the employer. Thus, it all boils down to the filing of the requisite DCRs due every Monday. As found by both the NLRC and the CA, the petitioner failed to file the DCRs on time on several occasions, and instead filed them in batches. Furthermore, the petitioner failed to submit the DCRs for February 10, 1997 to April 7, 1997. Considering that about ninety percent (90%) of the petitioner's work as a medical representative entails fieldwork, such DCRs were vital to his job; the DCRs were the primary basis upon which the petitioner's employer could track his accomplishments and work progress. Without the said DCRs, the employer would have no basis to determine if the petitioner was actually performing his assigned tasks or not.

The petitioner himself did not dispute the delayed filing of the DCRs, and his failure to submit those for February 10, 1997 to April 7, 1997. The petitioner himself admitted that he was not able to submit the required DCRs because of his busy schedule, in his Reply Position Paper filed with the Labor Arbiter.<sup>[22]</sup> The petitioner even postulated that he could have completed and submitted the said DCRs, had he not been terminated from employment.<sup>[24]</sup>

In the same light, the petitioner also failed to submit several doctors' call cards, and submitted others which were incomplete; that is, undated although signed by the doctors. It must be stressed that the said call cards were also vital to the petitioner's fieldwork. The requirement of asking the doctors to affix their signatures in the call cards, the date of the visit, as well as the samples and promotional items, if any, given to the doctors, enabled the SPC to verify whether such doctors were indeed visited by the petitioner.

Gross negligence under Article 282 of the Labor Code, as amended, connotes want of care in the performance of one's duties, while habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances.<sup>[25]</sup> Clearly, the petitioner's repeated failure to submit the DCRs on time, as well as the failure to submit the doctors' call cards constitute habitual neglect of duties. Needless to state, the foregoing clearly indicate that the employer had a just cause in terminating the petitioner's employment.

As to the second issue of whether or not the petitioner is entitled to backwages, we agree with the ruling of the NLRC and the appellate court that the petitioner is not entitled to backwages. The petitioner's contention that the ruling of the Court in *Serrano vs. NLRC*<sup>[26]</sup> should apply even if he was dismissed even before said ruling of the Court has no merit. When the petitioner was dismissed, the ruling of the Court in *Wenphil Corporation vs. NLRC*, [170 SCRA 69 (1989)].<sup>[27]</sup> that an employee who was not accorded his statutory right to two-notice before his dismissal by his employer was entitled only to indemnity, was the prevailing doctrine.

It can be recalled that in both Wenphil and Serrano, the respective employers therein failed to comply with the statutory two-notice requirement. The employer was ordered to pay indemnity to the employee in the Wenphil case; in Serrano, the employer was ordered to pay backwages from the time the employment was terminated until it was determined that the termination was for a just cause, due to the employer's failure to comply with the statutory requirement which rendered the employee's dismissal without legal effect.

The matter has been laid to rest in the recent case of Agabon vs. NLRC,<sup>[28]</sup> where the Court held that a violation of an employee's statutory right to two notices prior to the termination of his employment for a just cause entitles him to nominal damages of P30,000.00, absent sufficient evidence to support an award for actual or moral damages.

The Court ruled in the Agabon case that it was abandoning the doctrine laid down in Serrano in this wise:

After carefully analyzing the consequences of the divergent doctrines in the law on employment termination, we believe that in cases involving dismissal for cause but without observance of the twin requirements of notice and hearing, the better rule is to abandon the Serrano doctrine and to follow Wenphil by holding that the dismissal was for just cause but imposing sanctions on the employer. Such sanctions, however, must be stiffer than that imposed in Wenphil. By doing so, this Court would be able to achieve a fair result by dispensing justice not just to employees, but to employers as well.<sup>[29]</sup>

**IN LIGHT OF ALL THE FOREGOING**, the assailed Decision of the Court of Appeals is **AFFIRMED** with **MODIFICATION**. The respondents are **ORDERED** to pay, jointly and severally, indemnity to the petitioner in the amount of Thirty Thousand Pesos (P30,000.00). No costs.

**SO ORDERED.**

**PUNO, J., (Chairman), AUSTRIA-MARTINEZ, TINGA, and CHICO-NAZARIO, JJ., concur.**

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- [1] Penned by Associate Justice Jose L. Sabio, Jr. with Associate Justices Buenaventura J. Guerrero (now retired) and Eliezer R. de los Santos, concurring.
- [2] Records, p. 34. (Vol. I)
- [3] Id. at 17.
- [4] Id. at 16.
- [5] Id. at 35.
- [6] CA Rollo, p. 34.
- [7] Records, p. 18. (Vol. I)
- [8] Id. at 38.
- [9] Id. at 37.
- [10] CA Rollo, p. 50.
- [11] Records, p. 39. (Vol. I)
- [12] Ibid.
- [13] Records, pp. 146-147. (Vol. I).
- [14] Id. at 152-153.
- [15] Id. at 154.
- [16] Penned by Commissioner Tito F. Genilo, with Presiding Commissioner Lourdes C. Javier and Commissioner Ireneo B. Bernardo, concurring.
- [17] Records, pp. 175-176. (Vol. I).
- [18] Id. at 188-190.
- [19] 323 SCRA 445 (2000).
- [20] Rollo, p. 234.
- [21] Id. at 15.
- [22] Supra.
- [23] Records, p. 53 (Vol. I).
- [24] Id. at 54.
- [25] JGB and Associates, Inc. vs. NLRC, 254 SCRA 457 (1996).
- [26] Supra.
- [27] [170 SCRA 69 (1989)].
- [28] G.R. No. 158693, November 17, 2004.
- [29] Id. at 13. (Emphasis ours)