



Republic of the Philippines  
**Supreme Court**  
Manila

**SECOND DIVISION**

**JOEL A. TAPIA,**  
Petitioner,

**G.R. No. 235725**

Members:

LEONEN, *SAJ, Chairperson*  
LAZARO-JAVIER,  
LOPEZ, M.,\*  
LOPEZ, J., and  
KHO, JR., *JJ.*

-versus-

**GA2 PHARMACEUTICAL, INC.,**  
Respondent.

Promulgated:

**SEP 28 2022**

X ----- X

**DECISION**

**LAZARO-JAVIER, J.:**

Petitioner Joel A. Tapia (Tapia)<sup>1</sup> seeks to set aside the following dispositions of the Court of Appeals in CA-G.R. SP No. 148274:

1. **Decision**<sup>2</sup> dated July 12, 2017 insofar as it ordered his reinstatement to his former position without backwages; and

\* On official business.

<sup>1</sup> Represented by the Public Attorney's Office through Public Attorneys Mariel D. Baja, Flordeliza G. Merelos, Ma. Aimee E. Baldo and Noliver F. Barrido.

<sup>2</sup> Penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Ramon A. Cruz and Zenaida T. Galapate-Laguilles, *rollo*, pp. 39-47.

2. **Resolution**<sup>3</sup> dated October 27, 2017 denying his motion for reconsideration.

### ANTECEDENTS

In his complaint<sup>4</sup> for illegal dismissal and money claims, Tapia averred that sometime in July 2013, he got employed as a pharmacist at respondent GA2 Pharmaceutical, Inc. (GA2). His work schedule went from 9 o'clock in the morning until 6 o'clock in the evening from Mondays to Fridays. On Saturdays, his schedule went from 8 o'clock in the morning until 3 o'clock in the afternoon.<sup>5</sup> His salary was ₱16,000.00 per month.<sup>6</sup> As proof of his employment, he submitted copies of his pay slips for July and August 2013 and GA2's license to operate dated August 22, 2013 bearing his name as the assigned pharmacist of its Mandaluyong branch.<sup>7</sup>

He was later assigned as roving pharmacist to monitor, inspect, and supervise the operations of the drugstore branches in the National Capital Region, Cavite, and Bulacan.<sup>8</sup> He was likewise charged with product delivery and sales collection, on top of his supervisory functions.<sup>9</sup>

On June 11, 2015, he asked to be excused from his delivery task for the day because he was not feeling well and the company car was covered by the number coding scheme.<sup>10</sup> But Lancy Vijay Saldanha (Saldanha), General Manager of GA2,<sup>11</sup> scolded him and ordered their Personnel Officer Evelyn Zuniega (Zuniega) to draft his resignation letter.<sup>12</sup> When he refused to sign it, Saldanha allegedly ordered him to go home and never come back.<sup>13</sup>

Consequently, on June 15, 2015, Tapia filed a complaint for illegal dismissal through the Single-Entry Approach (SEnA).<sup>14</sup> Because settlement was not forthcoming, he filed a formal complaint for constructive dismissal, non-payment of overtime pay, holiday pay, and 13<sup>th</sup> month pay,

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<sup>3</sup> Id. at 49.

<sup>4</sup> Id. at 175–177.

<sup>5</sup> Id. at 18 and 104.

<sup>6</sup> Id.

<sup>7</sup> Id. at 81–83.

<sup>8</sup> Id. at 105.

<sup>9</sup> Id. at 105 and 123.

<sup>10</sup> Id.

<sup>11</sup> Id. at 70.

<sup>12</sup> Id. at 19 and 105.

<sup>13</sup> Id. at 18–19 and 105.

<sup>14</sup> Id. at 19.

illegal deduction, moral and exemplary damages and attorney's fees on July 24, 2015 docketed as NLRC-NCR Case No. 07-08739-15 entitled *Joel A. Tapia vs. GA2 Pharmaceutical, Inc./Lancy Vijay Saldanha/Sanju Bhagia*.<sup>15</sup> On September 24, 2015, he amended his complaint from constructive dismissal to illegal dismissal.<sup>16</sup>

On the other hand, GA2 claimed that Tapia was only hired on March 25, 2015 as pharmacist/driver on probationary status as evidenced by the probationary contract they executed on even date.<sup>17</sup> But after one (1) month, he no longer performed well. His co-employees had difficulty working with him which was the reason why he always got reprimanded.<sup>18</sup>

On June 9, 2015, Tapia was scheduled to deliver some pharmaceutical items to the GA2's Mandaluyong branch.<sup>19</sup> He refused though and then left the office after an altercation with Saldanha.<sup>20</sup> Saldanha thought Tapia would later on return after he had cooled down but the latter failed to show up even after an hour.<sup>21</sup> When he did not report for work, Saldanha ordered his secretary, Ashley Bernardo,<sup>22</sup> to contact Tapia but the latter refused to take their calls.<sup>23</sup> Thus, on June 15, 2015, Saldanha sent Tapia *via* registered mail a notice to explain (NTE) his absences without leave.<sup>24</sup> To prove that Tapia voluntarily left his work, GA2 submitted the affidavits of Tapia's co-employees on the incident they personally witnessed on June 11, 2015.<sup>25</sup>

### **RULING OF THE LABOR ARBITER**

By Decision<sup>26</sup> dated January 29, 2016, Labor Arbiter Joanne G. Hernandez-Lazo dismissed the complaint for lack of merit. She ruled that Tapia failed to prove that he was arbitrarily dismissed from work.<sup>27</sup> GA2's NTE as well as the affidavits of his co-employees prevailed over Tapia's self-serving allegations.<sup>28</sup>

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<sup>15</sup> Id. at 175.

<sup>16</sup> Id. at 19 and 105.

<sup>17</sup> Id. at 106 and 124.

<sup>18</sup> Id. at 41 and 124.

<sup>19</sup> Id. at 106.

<sup>20</sup> Id. at 70, 106 and 124-125.

<sup>21</sup> Id. at 71, 106 and 125.

<sup>22</sup> Id. at 85.

<sup>23</sup> Id. at 106.

<sup>24</sup> Id.

<sup>25</sup> Id. at 124-125.

<sup>26</sup> Id. at 104-110.

<sup>27</sup> Id. at 109.

<sup>28</sup> Id. at 108.

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**RULING OF THE NATIONAL LABOR RELATIONS  
COMMISSION (NLRC)**

By Decision<sup>29</sup> dated June 30, 2016, the NLRC reversed and declared Tapia to have been illegally dismissed, *viz.*:

**WHEREFORE**, premises considered, the assailed Decision dated 29 January 2016 is REVERSED AND SET ASIDE. A new one is rendered declaring the complainant to have been illegally dismissed. Respondent GA2 Pharmaceutical Inc. is ordered to pay complainant separation pay and backwages until the finality of this Decision.

Finally, respondent is ordered to pay complainant attorney's fees equivalent to 10% of the judgment award.

All other claims are denied for lack of merit.

**SO ORDERED.**<sup>30</sup>

The NLRC found that (1) Tapia sufficiently proved the fact of his dismissal when he made a categorical account of the pertinent events which Saldanha himself failed to refute;<sup>31</sup> (2) The affidavits of GA2's employees attesting that it was Tapia who shouted at Saldanha were self-serving;<sup>32</sup> (3) There was no proof of Tapia's receipt of the NTE; (4) The claim that Tapia was a probationary employee was a mere afterthought; (5) Tapia's immediate action against his dismissal negated the concept of abandonment,<sup>33</sup> and (6) Tapia's refusal to be reinstated during the conciliation conference was brought about by the parties' strained relations and not by his alleged decision to abandon his work.<sup>34</sup>

On motion for reconsideration,<sup>35</sup> GA2 submitted Saldanha's affidavit on the June 9, 2015 incident and proof of Tapia's receipt of the NTE. It also submitted the affidavit of Tapia's former employer and GA2's franchise holder for its Mandaluyong branch Lilibeth Bolsico (Bolsico) to prove Tapia's employment with her in July 2013 as a part-time pharmacy consultant. Bolsico stated that she recommended Tapia to GA2 when Tapia needed a full-time job.

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<sup>29</sup> Penned by Commissioner Isabel G. Panganiban-Ortiguerra and concurred in by Commissioners Joseph Gerard E. Mabilog and Nieves E. Vivar-De Castro, *id.* at 121-131.

<sup>30</sup> *Id.* at 130.

<sup>31</sup> *Id.* at 127-128.

<sup>32</sup> *Id.* at 128.

<sup>33</sup> *Id.* at 127.

<sup>34</sup> *Id.* at 127-129.

<sup>35</sup> *Id.* at 133-136.

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The NLRC denied reconsideration under Resolution<sup>36</sup> dated August 16, 2016.

### **RULING OF THE COURT OF APPEALS**

The Court of Appeals, by Decision<sup>37</sup> dated July 12, 2017 partially granted GA2's petition for certiorari and ordered Tapia's reinstatement, *sans* backwages. It ruled that Tapia failed to prove that he was dismissed from work. His allegations in support of his charge of illegal dismissal were self-serving and unsubstantiated. He even failed to show the supposed resignation letter he refused to sign.<sup>38</sup>

As for GA2, the Court of Appeals, too, disregarded its charge of abandonment against Tapia. On this score, the Court of Appeals did not give credence to the affidavits executed by Tapia's co-employees against him. It also found that Tapia did not receive the NTE which GA2 claimed to have sent him. Further, it rejected GA2's claim that Tapia was a probationary employee who supposedly failed GA2's performance evaluation. While GA2 presented the alleged probationary contract, it failed to prove that it explained to Tapia the standards under which he would qualify as a regular employee at the time of employment.<sup>39</sup>

Tapia's motion for reconsideration was denied under Resolution<sup>40</sup> dated October 27, 2017.

### **THE PRESENT PETITION**

Tapia now seeks affirmative relief through Rule 45 of the Rules of Court. He maintains that he was illegally dismissed and is entitled to his money claims. Saldanha berated him, told him never to return and forced him to sign a resignation letter.<sup>41</sup> Tapia understood those acts as a sign that he was no longer allowed to report for work.<sup>42</sup> Thus, he immediately filed a complaint against his employer.<sup>43</sup> Although he was unable to secure affidavits of witnesses to corroborate his version of the facts, the same

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<sup>36</sup> Id. at 164–166.

<sup>37</sup> Id. at 39–47.

<sup>38</sup> Id. at 45.

<sup>39</sup> Id. at 45–46.

<sup>40</sup> Id. at 49.

<sup>41</sup> Id. at 26.

<sup>42</sup> Id.

<sup>43</sup> Id.

should not be taken against him.<sup>44</sup> His co-employees cannot be expected to side with him and turn against their employer at the risk of also losing their jobs.<sup>45</sup>

Under Resolutions dated July 23, 2018<sup>46</sup> and July 24, 2019,<sup>47</sup> the Court twice directed GA2's counsel to explain why no disciplinary action should be taken against her for her failure to file a comment as required by the Resolution dated February 19, 2018. She was further directed to file said comment within ten (10) days from notice.

In her Manifestation with Motion for Time<sup>48</sup> dated November 26, 2019, GA2's counsel explained that the only notice she received from the Court was the Resolution dated July 24, 2019 which she received on November 25, 2019. Neither she nor her client, GA2, were aware of the petition filed by Tapia as they have not received a copy of the said petition or the two (2) other resolutions issued by the Court.<sup>49</sup> She moved to be given 15 days to file the required comment, counted from receipt of the petition which she would secure from the Court.

Under Resolution<sup>50</sup> dated June 15, 2020, the Court granted the motion of GA2 for additional time, counted from its receipt of a copy of the petition filed by Tapia. It also directed Tapia to furnish GA2 a copy of the petition.

In his Manifestation and Motion for Extension of Time to File Compliance<sup>51</sup> dated November 4, 2020, Tapia asserted that based on the registry return card, the petition was successfully delivered to GA2's counsel on January 26, 2018. Nevertheless, he manifested his intent to comply with the Court's directive to furnish GA2 another copy of the petition.<sup>52</sup> He manifested however that his counsel, the Public Attorney's Office (PAO), could not locate a copy of the petition despite diligent efforts and that its copy of the petition was, in all likelihood, erroneously included in the records of other cases.<sup>53</sup> Consequently, he was constrained to request a copy of the petition from the Court.

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<sup>44</sup> Id.

<sup>45</sup> Id. at 26-27.

<sup>46</sup> Id. at 228.

<sup>47</sup> Id. at 233.

<sup>48</sup> Id. at 236-238.

<sup>49</sup> Id. at 236-237.

<sup>50</sup> Id. at 238-A-238-B.

<sup>51</sup> Id. at 240-243.

<sup>52</sup> Id. at 240.

<sup>53</sup> Id. at 241.

Eventually, he received a copy of the petition from the Court on December 16, 2021. The next day, he furnished GA2 a copy under Registry Receipt No. RE 520 834 550 ZZ.<sup>54</sup> To date, however, GA2 has not filed its comment. The Court thus considers GA2 to have waived the opportunity to do so.

## OUR RULING

We reverse.

First off, it is not the Court's function to analyze or weigh evidence all over again in view of the corollary legal precept that the Court is not a trier of facts. The Court, nonetheless, may proceed to probe and resolve the factual issues presented here because of the inconsistent findings of the Labor Arbiter, NLRC, and Court of Appeals.<sup>55</sup>

In illegal dismissal cases, the employee must first establish by substantial evidence the fact of his or her dismissal from service before the employer bears the burden of proving that the dismissal was legal. The evidence to prove the fact of dismissal must be clear, positive and convincing.<sup>56</sup>

Here, Tapia was able to sufficiently establish the circumstances attendant to his dismissal. He recalled in detail that on June 11, 2015, he was not feeling well<sup>57</sup> and he could not deliver the merchandise of GA2 because the vehicle assigned to him was covered by the number coding scheme.<sup>58</sup> Saldanha then ordered Zuniega to prepare a resignation letter for Tapia. When the latter refused to sign the resignation letter, Saldanha "shouted and abased [him] in a very loud voice" and "ordered him to go home and never come back."<sup>59</sup>

In *Reyes v. Global Beer Below Zero, Inc.*,<sup>60</sup> the Court ordained that when a verbal command not to report for work is uttered by a person who has the capacity and authority to terminate an employee, the same could be construed as an overt act of dismissal, thus:

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<sup>54</sup> Id. at 273, 278, and 306.

<sup>55</sup> See *Agapito v. Aeroplus Multi-Services, Inc.*, G.R. No. 248304, April 20, 2022 [Per J. Lazaro-Javier, Third Division] citing *Gimalay v. Court of Appeals*, G.R. Nos. 240123 and 240125, June 17, 2020 [Per J. Lazaro-Javier, First Division].

<sup>56</sup> See *Rodriguez v. Sintron Systems, Inc.*, G.R. No. 240254, July 24, 2019.

<sup>57</sup> *Rollo*, p 63.

<sup>58</sup> Id.

<sup>59</sup> Id.

<sup>60</sup> 819 Phil. 483 (2017) [Per J. Peralta, Second Division].

Verbal notice of termination can hardly be considered as valid or legal. To constitute valid dismissal from employment, two requisites must concur: (1) the dismissal must be for a just or authorized cause; and (2) the employee must be afforded an opportunity to be heard and to defend himself. In justifying that such verbal command not to report for work from respondent Global's Vice-President for Operations Co Say as not enough to be construed as overt acts of dismissal, the CA cited the case of *Noblejas v. Italian Maritime Academy Phils., Inc.*. In the said case, an employee filed an illegal dismissal case after the secretary of the company's Managing Director told him, "No, you better pack up all your things now and go, you are now dismissed and you are no longer part of this office — clearly, you are terminated from this day on." This Court then ruled in that case that there was no dismissal to speak of because the secretary's words were not enough to be construed as overt acts of dismissal. Be that as it may, the factual antecedents of that case are different in this case. **In the present case, the one who verbally directed petitioner to no longer report for work was his immediate or direct supervisor, the Vice-President for Operations, who has the capacity and authority to terminate petitioner's services,** while in *Noblejas*, the one who gave the instruction was merely the secretary of the company's Managing Director. Hence, in *Noblejas*, this Court found it necessary that the employee should have clarified the statement of the secretary from his superiors before the same employee instituted an illegal dismissal case. **In the present case, Co Say's verbal instruction, being petitioner Reyes' immediate supervisor, was authoritative, therefore, petitioner Reyes was not amiss in thinking that his employment has indeed already been terminated.** (Emphases supplied, citations omitted)<sup>61</sup>

Being his immediate superior and GA2's general manager, Tapia believed that Saldanha had terminated his employment right upon the latter's command that he (Tapia) should go home and should no longer come back. Consequently, Tapia immediately filed the illegal dismissal case below. Tapia's factual version of the incident inspires belief and his immediate remedial action confirms its credence.<sup>62</sup> That no one among his co-employees came forward to support his complaint is quite understandable. It is understandable, too, that Tapia's co-employees executed the Affidavit dated December 9, 2015 (Affidavit)<sup>63</sup> which contravened Tapia's account and supported the claims of GA2, their employer.

Tapia's co-employees were naturally beholden to GA2 because their employment depended on the company. They would have done anything asked of them just so they could keep their employment.<sup>64</sup> They certainly

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<sup>61</sup> Id. at 495–496.

<sup>62</sup> See *Team Pacific Corporation, et al. v. Parente*, G.R. No. 206789, July 15, 2020.

<sup>63</sup> *Rollo*, p. 96.

<sup>64</sup> See *Go, Doing Business under the Name Gopoison Logistics v. Gantalao and Cañete*, G.R. No. 239981 (Notice), November 11, 2021.

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would have incurred the ire of GA2 had they disagreed with its version of events. Thus, the Affidavit is, at best, self-serving.<sup>65</sup> More important, the Affidavit did not even categorically refute Tapia's main cause of action—the fact of his summary dismissal on June 11, 2015.<sup>66</sup>

On the issue of abandonment, we quote with concurrence the disquisition of the Court of Appeals, *viz.*:

[We] do not, however, find its allegation of abandonment of work tenable. It has been invariably held that the filing of complaint negates any suggestion of abandonment. The alleged notice to explain, as correctly held by the NLRC, cannot be taken as evidence of abandonment as there is no indication that it was actually received by Tapia. As to the affidavit submitted, we agree with the NLRC that it is at best self-serving having been executed by employees beholden to their employer. x x x<sup>67</sup>

We now reckon with the length of time Tapia was employed with GA2. Notably, he has invariably claimed that his employment began in July 2013. His payroll slips on record bear the dates July 2013 and August 2013, and GA2's FDA license to operate bears his name as the resident pharmacist of GA2's Mandaluyong branch as of August 2013.

GA2 countered by presenting a probationary contract which Tapia allegedly signed to show that his employment started only in March 2015.<sup>68</sup> It also submitted the affidavit of Bolsico, GA2's franchise holder and the alleged employer of Tapia in July 2013.<sup>69</sup>

We agree with Tapia.

The Court has consistently ruled that there is no hard and fast rule designed to establish the elements of an employer-employee relationship. Some forms of evidence that have been accepted to establish the elements include, but are not limited to, identification cards, cash vouchers, social security registration, appointment letters or employment contracts, **payroll**, organization charts, and personnel lists, among others.<sup>70</sup>

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<sup>65</sup> *Uy v. Centro Ceramica Corporation and/or Sy and Garcia*, 675 Phil. 670, 683 (2011) [Per J. Villarama, Jr., First Division]

<sup>66</sup> *Rollo*, p. 96.

<sup>67</sup> *Id.* at 45.

<sup>68</sup> *Id.* at 94–95.

<sup>69</sup> *Id.* at 141.

<sup>70</sup> See *Salabe v. Social Security Commission*, G.R. No. 223018, August 27, 2020 [Per J. Lazaro-Javier, First Division].

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Here, Tapia's documentary evidence, *i.e.*, July and August 2013 payroll slips and the FDA license showing he was the resident pharmacist at GA2's Mandaluyong branch in August 2013, corroborated by his testimonial evidence, sufficiently establish his claim that his employment began in July 2013.

The probationary employment contract, though in writing, does not prevail over Tapia's evidence. The NLRC, as affirmed by the Court of Appeals, discarded the probationary contract being a mere afterthought. GA2 belatedly presented the contract despite Tapia's earlier assertion that he was hired in July 2013. Indeed, he was never a probationary employee. Too, the fact that Bolsico submitted an affidavit that Tapia was her part-time pharmacist does not contradict Tapia's claim that his employment with GA2 began in July 2013. Again, GA2 submitted its evidence too late in the day and only when it filed its motion for reconsideration of the NLRC's ruling.

All told, the NLRC correctly ruled that Tapia was illegally dismissed and that he is entitled to backwages, separation pay (in lieu of reinstatement), and attorney's fees.<sup>71</sup> We clarify however that the attorney's fees shall be received by the PAO as a trust fund to be used for the special allowances of its officials and lawyers, in accordance with Chapter 5, Title III, Book IV of Executive Order No. 292, or the Administrative Code of 1987, as amended by Republic Act No. 9406.<sup>72</sup>

**FOR THESE REASONS**, the Petition is **GRANTED**. The Court of Appeals' Decision dated July 12, 2017 and Resolution dated October 27, 2017 in CA-G.R. SP No. 148274 are **REVERSED** and **SET ASIDE**, and the Decision dated June 30, 2016 of the National Labor Relations Commission in NLRC LAC No. 04-001073-16 is **REINSTATED**. The total monetary award shall earn legal interest at six percent (6%) *per annum* from the finality of this Decision until full satisfaction.


The case is **REMANDED** to Labor Arbiter Joanne G. Hernandez-Lazo for the computation of the total monetary award.

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<sup>71</sup> *Rollo*, pp. 129–130.

<sup>72</sup> *Agapito v. Aeroplus Multi-Services, Inc. and De Guzman*, *supra* citing *Our Haus Realty Development Corporation v. Parian, et al.*, 740 Phil. 699, 720 (2014) [Per J. Brion, Second Division].

**SO ORDERED.**

  
**AMY C. LAZARO-JAVIER**  
Associate Justice

**WE CONCUR:**

  
**MARVIC MARIO VICTOR F. LEONEN**  
Senior Associate Justice  
Chairperson

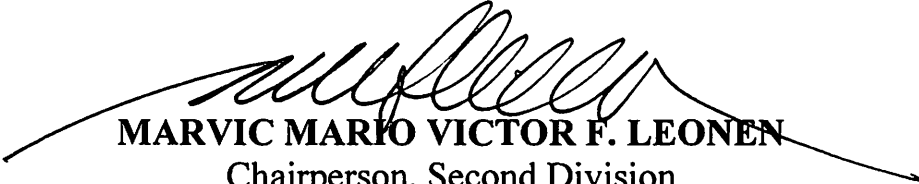
(On official business)  
**MARIO V. LOPEZ**  
Associate Justice

  
**JHOSEP V. LOPEZ**  
Associate Justice

  
**ANTONIO T. KHO, JR.**  
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.



**MARVIC MARIO VICTOR F. LEONEN**  
Chairperson, Second Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, 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.



**ALEXANDER G. GESMUNDO**  
Chief Justice

