

100 Phil. 804

[G. R. No. L-9666. January 30, 1957]

**STANDARD-VACUUM OIL CO., PETITIONER VS. KATIPUNAN LABOR UNION,
RESPONDENT.**

D E C I S I O N

REYES, A., J:

This is a petition for certiorari to review a decision of the Court of Industrial Relations.

It appears that on October 21, 1950, the petitioner Standard-Vacuum Oil Company suspended Alberto Cobarde as warehouseman at its Cebu Branch for having allegedly stolen five tins of the company's kerosene. Court approval of the suspension was subsequently sought by the company on the basis of a complaint for qualified theft filed by it against Cobarde in the Municipal Court of Cebu. But following the dismissal of that complaint, which removed the only ground given for Cobarde's suspension, the company, on March 5, 1951, filed a motion for authority to dismiss Cobarde for alleged additional irregularities ranging from pilferage of company property to abuse of his position for purposes of gain.

Opposing the motion, the Katipunan Labor Union, of which Cobarde was an officer filed an answer on his behalf, denying the alleged irregularities, imputing his suspension and the attempt to dismiss him to the company's anti-union activities, and asking that he be reinstated with back-pay and with additional compensation for overtime work.

After hearing, the Court of Industrial Relations found the charges against Cobarde not proved or without merit, except three, which the court, however, deemed not sufficiently serious to warrant his dismissal and for that reason only decreed that he be considered suspended for an aggregate period of one year from October 21, 1950 and authorized his transfer to another position without "demotion in salary. The Court also ordered payment of his back wages from October 21, 1951 but dismissed his claim for overtime pay.

Reconsideration of the decision having been denied by the Court *in banc*, the company

brought the case here by certiorari, contending that any one of the three charges of which Cobarde was found "guilty" justifies his dismissal, so that the lower court, in reducing the penalty to mere suspension and transfer, committed a serious mistake of law and a grave abuse of discretion.

"Let us look into the three charges referred to. As formulated in the petition for certiorari, those charges are "(1) shortage of 70 tins of kerosene which Cobarde attempted to cover up by conniving with a third party; (2) dereliction of duties resulting in the loss of 10 tins of kerosene and (3) taking advantage of his position as warehouseman to obtain stevedoring contract from a customer in violation of company regulations." Passing upon the charges, the lower court said:

(Anent the first charge, which was the second ground alleged for Cobarde's dismissal.)"On the second ground, Cobarde is charged for (sic.) having forced Galileo Figuracion to purchase products of respondent to cover up his alleged shortages in the warehouse. From the allegations themselves regarding this ground, respondent admitted that ' it did not suffer any damage in the act complained of; but it would appear that what it questions is the method with which Gobarde had allegedly covered up his alleged shortages. To prove its contention on this ground, respondent offered the testimony of Figuracion, who, aside from confirming the truth of his sworn statement taken before respondent's counsel, tried to explain how the shortages came about. In explaining 'the admission made by Cobarde to him regarding his shortages in tins of kerosene, Figuracion declared that the said shortages were not due to the fault of Cobarde but due to the omissions of his drivers. He declared that his trucks used to load tins of kerosene from the Cebu City Warehouse to be delivered to respondent's customers. While in transit some of these tins fell to the ground occasioning dentures and leakage. These destroyed tins were not accepted by the customers, but instead of reporting to him this fact or returning the tins to the warehouse, the drivers merely bring them to their respective homes."

This explanation is nothing but a vain attempt to explain away that he had earlier declared in his sworn statement that Cobarde had admitted to him the truth of these shortages in tins of kerosene and had asked him to buy seventy (70) tins for him to cover up his shortages. If the explanation of Figuracion is true then, there was no need for Cobarde to have asked him, a thing he did not deny, to buy

seventy tins of kerosene. From the time the trucks of Figuracion leave the warehouse with their respective cargoes of tins of kerosene and other products of respondent, the responsibility of Cobarde over these products ceases, and the responsibility of the carrier—in this case it was Figuracion—over them begins. Since the shortages in the delivery of tins of kerosene happened in the phase where Figuracion is responsible, then the shortages admitted by Cobarde to Figuracion are not the shortages as explained by him (Figuracion).”As the evidence stands, it is established, that Cobarde was short of seventy (70) tins of kerosene, and that these shortages were covered up by Figuracion upon request of Cobarde. But considering that respondent did not suffer any damages material or otherwise, in the shortages of Cobarde of seventy tins of kerosene, considering’ that in this Court respondent is only complaining against the procedure adopted by Cobarde in covering up his shortage, the dismissal of Cobarde on this ground alone is too grave a punishment. In consonance to justice and equity he should only be suspended.”(Anent the second charge.)”With regards to the ninth ground charging Cobarde of negligence in the delivery of Cock Brand Kerosene to LCT Leyte intended for the New Asia Lumber Company of Butuan, there seems to be no need for a lengthy discussion. What is involved in this charge is only ten empty tins of kerosene. The failure of Cobarde to complete the delivery of tins of kerosene to the New Asia Lumber Company was clearly not due to pilferage; it was due to mishandling of ship’s cargoes. Since Cobarde admitted that it was his duty to supervise outside deliveries and the delivery of the kerosene order of the New Asia Lumber Company is one such delivery and since he admits that instead of himself to this particular delivery he directed Ybaiez to tend to the delivery which resulted in the loss of ten tins of kerosene, Cobarde then should be made responsible for this failure. But since it concerns merely ten tins of kerosene, which respondent itself admits to be a minor loss Cobarde’s negligence in this instance does not warrant his dismissal. He should only be made to pay for the value of the ten tins of kerosene.”(Anent the third charge.)

“As regards the claim that Cobarde took advantage of his position as warehouseman and entered into an agreement with Carlos Ang Go Tong, a company customer, for the stevedoring jobs of M/S Rosalina and Dona Josefa, the evidence shows that Cobarde had indeed had Atty. Mercader contracted for the stevedoring jobs of these two boats. This was the reason why Aquino and Omega

tried to implicate Cobarde in the pilferage of gasoline as earlier discussed. But whether Cobarde used his influence as warehouseman, the evidence did not show. The fact, however, is that at the time he was still connected with respondent. The only evidence offered to show that there is a regulation violated by Cobarde when he entered into agreements with Ang Go Tong regarding the stevedoring jobs of the two boats is the oral testimony of Lauro de Leon. We take it that there is such regulation, though, because this was never denied by Cobarde. In having entered in this agreement with Ang Go Tong while he was still an employee of respondent, Cobarde violated this regulation. But this violation did not result in any material damage against respondent. For this reason, the dismissal of Cobarde on this ground will be too severe, considering: that there was no showing that he had repeatedly violated regulations of this kind. His transfer from warehouse to any other job in Cebu City without demotion in salary would be more in consonance with justice and equity.”

The facts as found by the lower court are not disputed. The only question is whether that court committed a grave abuse of discretion in not authorizing Cobarde’s dismissal.

An employer should not be compelled to continue an employee in the service if a justifiable cause for his discharge exists. But the determination of whether a justifiable cause for removal exists in any given case is a matter that cannot be left entirely to the employer. Consequently, it is held that the Industrial Court, in the settlement of labor disputes, is empowered to reduce excessive punishments meted out to erring employees. (*Tidewater Association Oil Co. vs. Victory Employees and Laborers’ Association, et al.*, 85 Phil., 166, 47 Off. Gaz., [6] 2863.)

In the present case, the Industrial Court, while finding some merit in three of the charges against Cobarde, was of the opinion that the faults committed by the latter were not serious enough to justify the penalty of dismissal and for that reason reduced the penalty to suspension and transfer plus indemnity for the 10 tins of kerosene lost. We are not prepared to say that the lower court, in so doing, gravely abused its discretion. Even the most serious of the three charges, which, as formulated in the petition, attempts to convey the impression that Cobarde tried to conceal a shortage of 70 tins of kerosene for which he was responsible, falls short of a just cause for removal. For, as found by the lower court, the shortage was not due to Cobarde’s fault but to pilferage committed by the truck-drivers of one Galileo Figuracion, who had the contract for delivering the company’s products to its

customers, and that all that Cobarde did in that connection was to make Figuracion buy kerosene from the same company to replace what had been filched by his men. The company suffered no losses, and it only complains against the method employed by Cobarde in making good the alleged shortage. The other two irregularities or faults committed by Cobarde are, in the light of facts found after hearing, minor ones, so that the lower court cannot be charged with grave abuse of discretion in refusing to make them a ground for dismissal, especially because that court had become persuaded that, Cobarde's dismissal was being sought because of his union activities. On this point the decision below says:

“One of the hardest thing to prove in a dispute between employer and employee is the dismissal of an employee due to his union activities. In finding whether an employee was dismissed due to union activities, resort is made to evaluating the background and circumstances surrounding his dismissal. In the case of Cobarde, it is shown that from the time he became a member of a union and became active member thereof so much so that he became Vice-President of petitioning union later, there is a systematic and consistent withdrawal from him. of the duties of warehouseman of the Cebu City Warehouse. Without changing his appointment as warehouseman, he was relieved of his duties regarding control and supervision of the warehouse, stock and personnel, he was merely given the duty to supervise outside deliveries which is but a part of his over-all duties as warehouseman before he became a union member. First he was relieved of his duties to supervise and control the warehouse, personnel and stocks therein when Monzon was assigned in the warehouse to take over. Then when Mercado was appointed Assistant Warehouseman, these duties were given to him. In other words, in the language of Cobarde, since he become a union member, he was made a warehouseman in name only. Respondent did not disprove this fact, for all that it did was to insist that Cobarde was still the warehouseman according to its position manual. And neither did it try to show why Cobarde was relieved of almost all his duties as warehouseman. These circumstances, happening as they did during the time when Cobarde became a union member and finally a union leader having ultimately become the Vice-President of the petitioning union, proved that his dismissal is sought for no other reason than his union activities.”

In view of the foregoing, the petition for certiorari is denied, with costs.*Paras, C. J.,*

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Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Conception, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

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