IRMA FISHING & TRADING, INC., AND ITS PRESIDENT/GENERAL MANAGER ROBERTO DEL ROSARIO, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (3RD DIVISION), CELSO SARDANE AND CONFE...

Ponente: BARRIOS, J.

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BARRIOS, J.:

This petition for certiorari was filed by Irma Fishing and Trading, Inc. and its president/general manager, Roberto Del Rosario (hereafter the petitioners for brevity) assailing the Decision dated April 26, 2001 of the National Labor Relations Commission (or NLRC) favorable to the respondent Celso Sardane (or Sardane), and the Resolution of April 30, 2002 denying its reconsideration.

On August 5, 1998, Sardane filed against the petitioners a case for unfair labor practice, illegal dismissal and non-payment of premium pay for holiday, separation pay, holiday pay and 13th month pay. The complaint was amended on November 19, 1998 to include illegal suspension and non-payment of premium pay for rest day and night differential pay plus damages and attorney's fees. Sardane also prayed for reinstatement in lieu of separation pay.

In his position paper, Sardane alleged that he is a member of the Confederated Labor Union of the Philippines (CLUP). He was hired by the petitioners sometime in July 1992 and assigned to work as a hatchman in their fishing vessels. On July 3, 1998, Sardane was placed on preventive suspension for thirty (30) days, and on August 3, 1998 he was terminated from employment on the charges of insubordination and challenging his superior to a fight.

Sardane claimed that his termination was without just and valid cause. He denied the charges that he refused to obey the orders of his superior and that he challenged the boat captain to a fight. On June 29, 1998, while he was on board the fishing vessel, he suffered severe stomach pain and headache so he asked to be excused from performing his tasks. The boat captain however refused to believe him. The maestro bodegero advised him to take a tablet for stomach pain, which he did and when the pain subsided he resumed his work. Upon reaching the port, he underwent urinalysis and hematology examinations at a hospital.

Sardane further claimed that he was denied due process because he was suspended for thirty (30) days without giving him the opportunity to explain his side on the charges against him. When he reported for work after his suspension, he was immediately served a notice of termination without the benefit of an investigation. He also asserted that the petitioners did not pay him overtime pay, night shift differential, premium pay for holiday and rest days and 13th month pay.

In their traverse, the petitioners maintained that Sardane was terminated for his act of insubordination. He had only feigned illness to be excused from performing his work, but it was very apparent to his superiors that he was just malingering. His insubordination and act of challenging the boat captain to a fight constitute the offense of serious misconduct and commission of a crime or offense which are valid grounds for termination. They also

claimed that Sardane was accorded due process because after he was placed on preventive suspension, he was served a written notice requiring him to explain his side regarding the incident on board the vessel. Sardane in fact submitted his letter of explanation on August 3, 1998. The petitioners also claimed that they conducted investigation and interview of the other personnel on board the vessel, and they all confirmed the serious misconduct of Sardane.

In its decision dated September 29, 1999, the Labor Arbiter ruled that:

> WHEREFORE, premises considered, judgment is hereby rendered dismissing the instant complaint for lack of merit.
>
> Respondent IRMA FISHING & TRADING, Inc. is, however, ordered to pay complainant his proportionate 13th month pay for 1998 (200 x 26 x 7 ÷ 12) P3,033.33.
>
> All other claims are also dismissed for lack of merit.
>
> SO ORDERED. (pp. 86-87, rollo)

Sardane appealed this to the NLRC which reversed this in the now assailed Decision dated April 26, 2001, holding that:

> WHEREFORE, the decision dated 29 September 1999 is hereby REVERSED and SET ASIDE and a new one entered ordering respondent Irma Fishing & Trading, Inc to pay complainant the following:
>
> 1. Separation pay ----------
> (1992-1998)
>
> P30,888.00
>
> 2. Backwages ----------
> (July 1998 to September 1999)
>
> 77,220.00
>
> 3. Proportionate 13th month pay for 1998
>
> 2,574.00
>
> Total ----------
>
> P110,682.00
>
> ==========
>
> SO ORDERED. (pp. 32-33, rollo)

A motion for reconsideration was filed by the petitioners but this was denied by the NLRC in its Resolution dated April 30, 2002.

Hence the petitioners sought relief through this petition raising the following issues for consideration:

> - WHETHER OR NOT PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT REVERSED AND SET ASIDE THE CLEARLY FAIR AND JUST DECISION OF THE LABOR ARBITER BELOW;
>
> - WHETHER OR NOT PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION

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WHEN IT CONSIDERED AS SELF-SERVING STATEMENTS OF EMPLOYEE-WITNESSES, THUS, RENDERING IT DIFFICULT, IF NOT IMPOSSIBLE, FOR AN EMPLOYER TO HAVE WITNESS/ES TO AN OFFENSE COMMITTED BY AN EMPLOYEE;

- WHETHER OR NOT PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT BECAME TOO TECHNICAL IN ITS REQUIREMENTS ALTHOUGH IT IS ONLY A QUASI-JUDICIAL BODY;

- WHETHER OR NOT PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT HELD THAT RESPONDENT SARDANE WAS NOT ACCORDED HIS RIGHT TO DUE PROCESS. (p. 12, rollo)

Considering the conflicting dispositions of the Labor Arbiter and the NLRC, We go back to square one and ask whether Sardane was illegally dismissed from employment.

As borne by the records, Sardane's dismissal was based mainly on the charge of serious misconduct for challenging the boat captain to a fight and for refusing to obey the orders of his superior. To prove these charges, the petitioners submitted the written statement of the boat captain Leopoldo Malinao claiming that Sardane most of the time refused to obey the orders of his superior without any valid reason. Malinao called Sardane's attention many times about his insubordination but he persisted to willfully disobey his superior. The petitioners likewise submitted a written statement from Nelson Flotildes, the boat's maestro bodegero and the immediate superior of Sardane. In his statement, Flotildes reiterated the claim that Sardane had a habit of disobeying his orders, and the ship captain’s intervention only resulted in an argument between the two. The petitioners also submitted a letter from Romeo Burdeos addressed to the petitioners where he reported Sardane for insubordination and challenging him to a fight.

For his part, Sardane denied the charges against him and advanced an entirely different version of the incident that transpired on June 29, 1998. He claimed that while on board the fishing vessel, he experienced severe stomach pain and headache. He asked to be excused from work but the boat captain refused to believe him claiming that he was just feigning his illness. To prove that he was not, Sardane submitted the results of his urinalysis and hematology examinations which were conducted after their arrival in the port.

To begin with, serious misconduct is defined as the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. For serious misconduct to warrant the dismissal of an employee, it (1) must be serious; (2) must relate to the performance of the employee's duty; and (3) must show that the employee has become unfit to continue working for the employer (Roquero vs. Philippines Airlines, Inc. 401 SCRA 424).

Based on these standards, We find that the alleged infractions of Sardane could be considered a serious misconduct and the petitioners are justified in dismissing him from employment. The petitioners' documentary evidence which consists of the written statements made by Sardane's co-employees lead to a conclusion that Sardane actually committed insubordination, as well as disrespect to his superior by challenging the latter to a fight. Substantial proof, and not clear and convincing evidence or proof beyond reasonable doubt is sufficient as basis for the imposition of any disciplinary action upon the employee (Reyno vs. Manila Electric Company, 434 SCRA 660).

Moreover, the NLRC committed grave abuse of discretion in rejecting the written statements of Malinao, Flotildes and Burdeos for being hearsay and self-serving because they are not verified and under oath. It must be noted that the petitioners submitted duly notarized affidavits of their witnesses Malinao and Flotilde in their Supplement to Motion for Reconsideration filed with the NLRC. Besides, the rules of evidence are not strictly

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observed in proceedings before the Labor Arbiter and the NLRC. Section 6, Rule V of the NLRC Rules of Procedure, as amended by Resolution No. 01-02, Series of 2002, provides:

> Section 6. NATURE OF PROCEEDINGS. - The proceedings before a Labor Arbiter shall be non-litigious in nature. Subject to the requirements of due process, the technicalities of law and procedure and the rules obtaining in the court of law shall not strictly apply thereto. The Labor Arbiter may avail himself of all reasonable means to ascertain the facts of the controversy speedily, including ocular inspection and examination of well-informed persons.

In disregarding these material proofs, the NLRC pulled the rug from under the petitioners and deprived them of their full day in court.

But on another point, We find that the petitioners failed to comply with the procedural requirements for a valid dismissal. Two notices are required before an employee may be validly dismissed: (a) written notice containing a statement of the cause for termination, to afford the employee an opportunity to be heard and defend himself with the assistance of his representative, if he desires; and (b) if the employer decides to terminate the services of the employee, written notice must be given to the employee stating clearly the reason therefor (Rodriguez, Jr. vs. NLRC, 393 SCRA 511).

While it is true that the Notice of Preventive Suspension was served upon Sardane as shown by his signature acknowledging receipt of this, the petitioners however failed to prove that Sardane actually received the written notice which should have informed him of the company's intention to dismiss him in order to give him the opportunity to be heard and defend himself. Where the dismissal is for a just cause, as in the instant case, the lack of statutory due process should not nullify the dismissal, or render it illegal, or ineffectual. However the employer should indemnify the employee for the violation of his statutory rights x x x an employer is liable to pay indemnity in the form of nominal damages to an employee who has been dismissed if, in effecting such dismissal, the employer fails to comply with the requirements of due process (Agabon vs. NLRC, 442 SCRA 573). Applying this to the instant case and its circumstances, We find it proper to award Sardane the amount of P20,000.00 against the petitioners.

WHEREFORE, the petition is GRANTED and the questioned Decision of the NLRC dated April 26, 2001 and Resolution of April 30, 2002 are SET ASIDE. Concomitantly, the Decision of the Labor Arbiter dated September 29, 1999 is AFFIRMED but with the MODIFICATION that the petitioners are ordered to pay Sardane P20,000.00 as nominal damages for non-compliance with the statutory due process.

SO ORDERED.

Guariña III and Romilla-Lontok, JJ., concur.

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