

EUSEBIO L. GABISAN, PETITIONER, VS. MARIA CRISTINA FERTILIZER CORPORATION, RESPONDENT.

G.R. No. L-49402. September 02, 1985

Ponente: CUEVAS, J.

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CUEVAS, J.:

Petition for review by certiorari of the decision dated August 17, 1978 of the Office of the President, rendered through the former Presidential Executive Assistant Jacobo C. Clave, which affirmed the decision of the then Acting Secretary of Labor Amado G. Inciong in NLRC Case No. IC-203-75, entitled "Eusebio Gabisan vs. Maria Cristina Fertilizer Corporation", dated May 31, 1977.

The antecedents of this petition are as follows:

Petitioner worked as a boiler operator with a monthly salary of P264.00 in respondent company from 1960 to November 7, 1974 when he was barred by company security guards from entering respondent's premises upon verbal order of its legal officer, Atty. Ruben de la Cruz.

The record discloses that on November 1, 1974, petitioner and his son Felizardo were apprehended by a security guard in the act of stealing scrap lead belonging to the respondent. After investigation conducted by management, it was decided that petitioner be placed under preventive suspension pending issuance of a clearance from the Department of Labor (now Ministry of Labor and Employment) for his dismissal. Thus, on November 6, 1974, attempts to serve petitioner at his residence with a copy of the letter informing him of his preventive suspension were made by the chief security guard Iluminado Zalzos. Petitioner however refused to receive said letter.

On November 11, 1974, similar attempts were again made to serve upon petitioner at his residence a copy of the application for clearance to terminate employment. And again, petitioner refused to receive or acknowledge the same. Thereafter, a copy of said application for clearance was mailed on November 12, 1974 by respondent to the Department of Labor's Regional Office No. X at Cagayan de Oro City which said office received on November 18, 1974.

Failing to contest his suspension, respondent sent petitioner another letter on November 30, 1974 informing him of his termination from work effective as of that date. Again, petitioner refused to acknowledge receipt of the letter which was served on him at his residence by Zalzos. Thereafter, respondent mailed the letter to him which he received on April 19, 1975.

On May 6, 1975, petitioner filed a complaint with the Labor Relations Division of Regional Office No. X, at Iligan City charging respondent of illegal dismissal with a prayer that he be reinstated with back wages plus damages.

Having failed to forge an amicable settlement between the parties, the conciliator certified the case to the Labor Arbiter for compulsory arbitration on June 30, 1975.

On February 26, 1976, the Executive Labor Arbiter dismissed the complaint but awarded back wages to the petitioner. The dispositive portion of the judgment reads as follows:

"WHEREFORE, aforesated premises considered, judgment is hereby rendered dismissing the complaint of illegal dismissal but ordering respondent to pay Eusebio Gabisan the amount of P3,960.00 representing back wages from November 30, 1974 to February 26, 1976 for violating Section 11 of P.D. No. 21.

SO ORDERED."[1]

From the foregoing decision, respondent appealed to the National Labor Relations Commission contending —

- (a) that the labor arbiter erred in finding the respondent appellant to have violated Section 11 of P.D. No. 21;
- (b) that he erred in concluding that the rules and regulations applicable to the instant case in Sec. 4(c), second par., Implementing Instructions No. 1 of PD 21;
- (c) that he erred in awarding back wages commencing on November 30, 1974 to the appellee even assuming that the appellant violated Section 11 of P.D. No. 21.[2]

On July 12, 1976, the National Labor Relations Commission (First Division) reversed the decision complained of with the following disposition —

"Under the foregoing circumstances, it becomes evident that the appellant has substantially complied with the formal requisites of prior clearance, and therefore, it could, as it correctly did, dismiss with cause the appellee.

WHEREFORE, let the Decision of February 26, 1976 be, as it is hereby REVERSED and the complaint dismissed for lack of merit.

SO ORDERED."[3]

Petitioner Gabisan appealed the abovesaid decision to the Office of the Secretary (now Minister) of Labor who, in turn, affirmed the said decision on May 31, 1977. Thereafter, petitioner appealed to the Office of the President and as herein earlier stated, the former Presidential Executive Assistant Jacobo C. Clave, acting by authority of the President, affirmed the decision of the then Acting Secretary of Labor Amado G. Inciong.

Hence, this instant petition.

Petitioner now maintains that —

1. The President's Decision rendered through Presidential Executive Assistant Jacobo C. Clave, by authority of the President erred in considering that the three (3) successive tenders of notices relative to suspension and clearance to terminate employment are equivalent to proof of service as required by Section 4(e), second paragraph of the Implementing Instruction No. 1 of Presidential Decree No. 21.
2. That the President's Decision rendered through Presidential Executive Assistant Jacobo C. Clave, by authority of the President, is not in accord with or is contrary to the ruling of the Supreme Court in the case of Philippine Air Lines versus Philippine Air Lines Employees Association, L-24626.[4]

Petitioner assiduously calls attention to Sec. 4(e), second paragraph, of the Implementing Instruction No. 1 of Presidential Decree No. 21,[5] which according to him requires the following:

1. That the application (for) clearance to terminate employment shall be signed under oath by the employer or his authorized representative;
2. That the application (for) clearance to terminate employment shall be served on the employee involved therein on the same day it is filed with the proper regional office; and

3. That the application (for) clearance to terminate employment filed with the proper regional office shall indicate with (sic) proof of such service on the employee concerned.[6]

He argues that the aforestated provision is mandatory in nature and must be construed strictly against the respondent. He asserts that there was no valid service on him of the clearance application because: (a) it was not under oath; (b) it was notarized only on November 12, 1974; and (c) it did not indicate any proof of such service to him. Consequently for failure of respondent to follow the procedure required in Sec. 4(e), it could not dismiss petitioner for legally speaking, there was no clearance to terminate his employment.[7]

At first blush, petitioner's contention seems tenable. It is true that the application did not indicate proof of service of a copy thereof to petitioner. But it cannot be denied that respondent attempted three (3) times to tender notices to him and three times he refused to acknowledge receipt of said notices.

The advance notice of dismissal is required in order to obviate abrupt and arbitrary dismissal and to enable the poor laborer or employee to survive while he is looking for another job.[8] However, in this case, Gabisan's dismissal was visited on him by his own obstinacy. Had he not refused, to receive the notices and communications sent to him advising him of his suspension and eventual dismissal, he could have opposed the said application and be heard in connection therewith instead of merely relying on technicalities as a defense.

Be that as it may, he cannot now successfully claim that he was not informed of his suspension and ultimate dismissal. It cannot be denied that he was investigated on November 1 & 4, 1974 for stealing scrap 1 lead belonging to the respondent. Thereafter, he was not allowed to enter respondent's, premises on November 7, 1974. He should have taken his cue from these incidents. In other words, he was sufficiently warned and his suspension did not come as a surprise to him. He knew all along that it was coming and when he did not lift a finger to contest the application for clearance to terminate, he has nobody to blame but himself, and he should be made to suffer the consequences of his inaction.

We, therefore, agree with, and hereby affirm, the finding of respondent National Labor Relations Commission that private respondent Company had substantially complied with the formal requirements of prior clearance to terminate, as it did, petitioner's employment.

In his second assignment of error, petitioner invokes the case of *Philippine Air Lines, Inc. vs. Philippine Air Lines Employees Association (PALEA)*[9] to support his plea for reinstatement.

Such a reliance is misplaced. The aforesaid case renders petitioner no assist whatsoever. For while it is true that the loss of trust and confidence, which was the Company's (PAL) basis for dismissing Fidel Gotangco, its employee in that case, was brought about by the alleged theft of company property, the taking was not considered theft, it appearing that the article taken hardly has any appreciative value nor was it of any use to respondent PAL, much less did the company suffer any prejudice thereby. Hence, dismissal is too severe a penalty and more so in the light of Gotangco's 17 years of continuous and satisfactory service to PAL.

The fact that this Court did not consider theft to have been committed by Gotangco, the PAL employee in the aforesaid case, may be gleaned from this pertinent portion of the opinion of the Court:

"Much less should the result reached by this Court lend itself to the interpretation that there has been a condonation of theft. From the facts as found by respondent Court accepted by petitioner the offense was 'breach of trust and violation of the rules and regulations of the company.' A lead material of negligible size, in the opinion of respondent Court, its measurement being eight inches by ten, with thickness of one-half inch, not shown to be of any use to the company, hardly of any pecuniary worth, was picked up by the employee in question, but thereafter taken from him by a security guard. That was all that transpired. It would be too harsh an appraisal to view it as constituting theft. So the parties have considered the matter. If stress is laid on this

aspect of the case, it is only to ward off any unwarranted inference that this Court was not properly mindful of the more serious consequences that should ordinarily follow a dishonest act amounting to a crime."
(Underscoring supplied)

In the case at bar, the charge levelled against the petitioner was not a mere accusation nor a baseless imputation. He was caught in flagrante delicto by the respondent's security guard stealing lead scrap which he never denied. He put up no defense whatsoever against that charge in the investigation conducted by the management. In his appeal to the NLRC, then to the Secretary (now Minister) of Labor and finally to the Office of the President, petitioner did not question nor take issue within the correctness of the finding of the Labor Arbiter regarding his being guilty of theft of company property.

That theft of company property is punishable by dismissal has been so ruled by this Court in the case of *International Hardwood and Veneer Company of the Phil. vs. Leogardo*:^[10]

"The dismissal of a dishonest employee is as much in the interest of labor as it is of management. The labor force in any company is protected and the workers' security of tenure strengthened when pilferage of equipment, goods and products which endangers the viability of an employer and, therefore, the workers' continued employment is minimized or eliminated and consequently labor-management relations based on mutual trust and confidence are promoted."

WHEREFORE, the decision sought to be reviewed is hereby **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

Concepcion, Jr., Escolin, Alampay, and Patajo, JJ., concur.

Aquino, (Chairman), and Abad Santos, JJ., on leave.

[1] Page 27, Rollo.

[2] Page 28, Rollo.

[3] Page 30, Ibid.

[4] Petition, page 1.

[5] "An application and report required by this instruction shall be signed under oath by the employer or his duly authorized representative and may be accompanied by pertinent records and documents to facilitate the issuance of the clearance or the review of the reports. A copy of the application or report shall be served on the employees involved there-in on the same day it is filed with the National Labor Relations Commission or proper Regional Office, with proof of such service on the employees concerned."

[6] Petition, page 5.

[7] Ibid, pages 5-6.

[8] *Horacio vs. Fernandez*, 77 SCRA 125.

[9] 57 SCRA 489.

[10] 117 SCRA 967.

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