

**NICOLAS V. ICASIANO, PETITIONER, VS. OFFICE OF THE PRESIDENT,
MINISTRY OF LABOR, NATIONAL LABOR RELATIONS COMMISSION,
E. RAZON, INC., AND ENRIQUE RAZON, RESPONDENTS.**

G.R. No. L-49855. May 15, 1992

Ponente: ROMERO, J.

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ROMERO, J.:

This petition for certiorari, which stemmed from the illegal dismissal of petitioner from the employment of E. Razon, Inc., reached this Court after the case had taken the circuitous route from the voluntary arbitrator to the National Labor Relations Commission, thence to the Secretary of Labor and finally to the Office of the President.

The facts of the case are as follows:

Nestor Magno, Demetrio Angeles and petitioner Nicolas Ica-siano were employed by private respondent E. Razon, Inc. on May 1, 1966 when the company was awarded the arrastre operations at Piers 3 and 5 of the South Harbor, Port of Manila. Magno and Angeles were employed as delivery checkers while petitioner Icasiano was employed as gate inspector.

On June 15, 1971, Magno and Icasiano were suspended pending further investigation for their alleged involvement in the falsification of gate passes Nos. F-55398 and J-56334. Magno allegedly falsified gate pass No. F-55398 by changing the figure 400 to 240 thereby allowing the theft of 160 bags of polyethylene 545. He allegedly did the same thing with gate pass No. J-56334; the figure 301 was changed to 200 thereby allowing the theft of 101 bags of synthetic resin. Angeles was suspended on June 21, 1971 pending investigation of his alleged involvement in the falsification of gate pass No. H-53797 by altering figure 401 to 240, thereby allowing the illegal withdrawal of 161 bags of synthetic resin. Icasiano allegedly conspired with Magno and others in that he allowed the truck carrying the cargo in question to go through his post, aware that it contained more than the actual load appearing on the face of the tampered gate passes.

A criminal complaint was filed by the private respondent company against Angeles, Magno and petitioner Icasiano before the City Fiscal's Office of Manila. It was, however, dismissed for "insufficiency of evidence."

In view of their alleged participation in the falsifications, Magno, Angeles and Icasiano were later dismissed from employment. The letters of termination of Magno and Icasiano were both dated September 16, 1971 but their termination was made effective June 15, 1971, the date of their suspension.

For their failure to obtain reinstatement and for refusal of the company to submit their dismissal to a grievance committee pursuant to a collective bargaining agreement, the Associated Port Checkers and Workers Union-PTUC, and claimants Angeles and Magno filed with the labor authorities a complaint on November 17, 1972 for Angeles' and Magno's reinstatement and backwages on the ground of unjustified dismissal.[1] In compliance with the provisions of Presidential Decree No. 21 and the Rules and Regulations issued pursuant thereto, the case was submitted for voluntary arbitration to an arbitrator chosen by the parties. Before any

evidence could be adduced by either side before the arbitrator, Icasiano intervened, alleging that his interests were identical with those of Magno since both of them were dismissed for allegedly the same offense. His request was granted.

On June 13, 1973, voluntary arbitrator Adrian E. Cristobal rendered a decision finding that E. Razon, Inc. failed to sub-ststantiate their claim that Magno, Angeles and herein petitioner Icasiano committed acts inimical to its interest which warranted their dismissal from the service. The dispositive portion of said decision reads as follows:[2]

"WHEREFORE, judgment is hereby rendered, ordering respondent E. Razon, Inc. to reinstate Nestor Magno, Demetrio Angeles and Nicolas Icasiano to the positions each one held prior to dismissal. Respondent E. Razon, Inc. is likewise ordered to pay complainants and intervenor the salary each one was receiving at the time of dismissal, computed from the day their respective dis-missals were made to take effect, until their effective reinstatement. Respondent E. Razon, Inc., is likewise ordered to restore to complainants and intervenor, all benefits to which they may be entitled to under the Collective Bargaining Agreements existing between their Unions and respondent corporation, as if they had not been dismissed from employment.

No pronouncement as to costs.

It is so ordered."

E. Razon, Inc. appealed said decision to the National Labor Relations Commission (NLRC) on the grounds of the voluntary arbitrator's disregard of vital evidence and partiality, and the decision being contrary to law. Instead of acting on the appeal, the NLRC assigned the case to mediator-factfinder Roy V. Señeres for conciliation. However, the attempt to reconcile their differences failed leaving the NLRC with no other option but to act on the appeal. On July 31, 1974, the NLRC, thru Chairman Amado G. Inciong and members Diego P. Atienza and Ricardo C. Castro, rendered a decision the decretal portion of which reads: [3]

"THEREFORE, the decision appealed from is hereby reversed. The termination of the complainants (includ-ing intervenor Icasiano) is hereby upheld and the respondent is hereby ordered to pay them termination pay in accordance with law or the collective bargaining agreement whichever is higher.

SO ORDERED."

The claimants and herein petitioner appealed the decision of the NLRC to Secretary of Labor Blas F. Ople who dismissed the appeal on October 14, 1974 in a Resolution which reads in full:[4]

"Under consideration are two (2) Notices of Appeal filed by complainants Demetrio Angeles and Nestor Magno and intervenor Nicolas Icasiano on August 19, 1974 and August 9, 1974, respectively, intended to declare the Decision of the National Labor Relations Commission dated July 31, 1974 as contrary to the facts and evidences presented to the Voluntary Arbitrator.

After a careful perusal of the entire records of this case, we are constrained to conclude that the decision of the Commission is in accord with the evidences adduced before the Voluntary Arbitrator.

IN VIEW THEREOF, the said notices of appeal are hereby DISMISSED and Decision of the Commission AFFIRMED.

SO ORDERED."

The motion for reconsideration of said Resolution was dismissed by Acting Labor Secretary Amado G. Inciong on June 4, 1975 for lack of legal basis and merit.[5] A second motion for reconsideration was likewise dismissed by Secretary Ople for lack of merit on October 15, 1975.[6]

The same fate awaited the appeal to the Office of the President. It was dismissed for lack of merit on January 31,

1978 in a decision signed by Presidential Assistant for Legal Affairs Ronaldo D. Zamora.[7] The motion for reconsideration was also denied on October 20, 1978 in a Resolution signed by Presidential Executive Assistant Jacobo C. Clave.[8]

Hence, this petition. Petitioner Icasiano contends that the decision of the voluntary arbitrator is final and unappealable on the ground that when petitioner intervened in the arbitration proceedings on January 9, 1973, the Implementing Rules and Regulations of the NLRC, which were in effect since October 8, 1972, did not provide for appeals from decisions of voluntary arbitrators. He argues that while at the time of the promulgation of the decision of the voluntary arbitrator, the rules and regulations authorized appeals to the National Labor Relations Commission on the grounds of disregard of vital evidence, being contrary to law and partiality, such amendment cannot be given retroactive effect to voluntary arbitrations commenced but not terminated before it came into force.[9]

Petitioner further contends that the NLRC erred in holding that private respondent E. Razon, Inc., had some basis for its loss of confidence in petitioner thereby warranting his dismissal. Contending that the NLRC decision "was patently written in anger thereby violating the basic rudiments of substantial justice", petitioner states that the NLRC decision does not have findings of fact "except to say that vital evidence was disregarded when that evidence consisted merely of hearsay statements by persons whom (he) was unable to confront." [10]

Petitioner also maintains that the NLRC did not find the evidence either competent or sufficient because it did not reverse the finding of the arbitrator that he was innocent of the falsification of which he was accused. Hence, petitioner contends, since the charge of falsification was not substantiated, the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it held that the evidence, regardless of its incompetence or insufficiency, was a valid ground for his dismissal.[11]

On the first issue raised by petitioner, both public and private respondents assert that the Implementing Rules and Regulations of the NLRC pursuant to Presidential Decree No. 21 dated October 14, 1972, relied upon by petitioner Icasiano, had been superseded by Supplementary Rules and Regulations No. 1 dated January 26, 1973. They argue that since the decision of the voluntary arbitrator was promulgated on June 13, 1973, the same was covered by said Supplementary Rules and Regulations No.1 and, therefore, the decision of the voluntary arbitrator was appealable to the NLRC.[12]

As regards petitioner's second contention, both public and private respondents allege that respondent company acted in good faith in dismissing herein petitioner and that the NLRC relied on the available evidence which was administratively sufficient to justify loss of confidence in petitioner who was occupying a position of trust. They assert that the altered gate passes coupled with the confessions of Magno, Bonnet, Martinez and Baluyot constitute substantial evidence indicating petitioner's participation in the pilferage of the cargo in question.[13]

A reading of the NLRC decision reveals the unique way by which the NLRC treated the appeal. Thus, according to the decision itself, Commission members Ricardo C. Castro and Diego P. Atienza signed a one-paragraph resolution affirming the decision of the voluntary arbitrator "thinking it was a routine matter." However, when the resolution was presented to Chairman Amado G. Inciong, he refused to sign it and allegedly explained to the two Commission members his reasons for his inaction. The said resolution was therefore disregarded because, allegedly, upon the suggestion of the President of the Associated Port Checkers and Workers Union (APCWU), the NLRC referred the case to Roy V. Señeres for conciliation "to give the claimants the opportunity to bargain for some voluntary concessions from management, using the decision of the voluntary arbitrator as a leverage." The conciliation efforts, however, failed because the parties "did not fully cooperate and partly because the Commission and Atty. Señeres were occupied with other more urgent matters in the NLRC and in the

Department.”[14] The APCWU President himself allegedly had lost interest in the case because the claimants "virtually stopped following up the case with him." To cap it all, the claimants "engaged in a wild campaign of slander against the Commission, especially its Chairman x x x whose only fault was his continuing failure to reverse the decision of the voluntary arbitrator," until they "wrote a letter to columnist Teodoro Valencia making malicious insinuations against the Commission and its Chairman.”[15]

With this backdrop, the NLRC ruled against the petitioner. After the appeal to the Secretary of Labor had been denied, the motion for its reconsideration was likewise denied and resolved by no less than the Chairman of the NLRC who was then Acting Secretary of Labor. While NLRC Chairman and Acting Secretary of Labor Inciong ruled only on the motion for reconsideration, he was also reviewing the merits of the decision wherein he had participated. That he should not have acted on the motion for reconsideration and held the matter in abeyance until after Secretary Ople[16] could handle it to obviate a mockery of administrative justice, is best explained by this Court in *Zambales Chromite Mining Co. v. Court of Appeals*: [17]

"In Order that the review of the decision of a subordinate officer might not turn out to be a farce, the reviewing officer must perforce be other than the officer whose decision is under review; otherwise, there could be no different view or there would be no real review of the case. The decision of the reviewing officer would be a biased view; inevitably, it would be the same view since being human, he would not admit that he was mistaken in his first view of the case."

Be that as it may, the first issue petitioner raises, a procedural one, must fail. Supplementary Rules and Regulations No. 1 issued by the NLRC on January 26, 1973 governed appeals in compulsory and voluntary arbitration. Section 1 thereof pro-vides:

"Section 1. Any aggrieved party in any award, whether on voluntary or compulsory arbitration, may appeal to the Commission or to the Secretary of Labor, as the case may be, on the following grounds:

- a) If the arbitrator exceeded his authority in accordance with the terms of the arbitration agreement;
- b) If the award is obtained through fraud;
- c) If the arbitrator disregards vital evidence which if considered may substantially change the nature of the award;
- d) On grounds of partiality and special interest to favor one of the parties in the case, if not disclosed to the parties at the beginning of the proceedings."

Private respondent interposed its appeal to the NLRC on June 29, 1973, two days from receipt of a copy of the decision of the voluntary arbitrator. Inasmuch as the Supplementary Rules and Regulations No. 1 took effect immediately after its issuance on January 26, 1973, the same was applicable to the said appeal notwithstanding the fact that petitioner intervened in the voluntary arbitration case on January 9, 1973,[18] a few days before Supplementary Rules and Regulations No. 1 was issued.

On the substantive aspect of this case, however, petitioner succeeds. Worth quoting is the portion of the NLRC decision disposing of the merits of this case (Annex L, pp. 122-126):

"The decision of the voluntary arbitrator is premised not on the absence of evidence pointing to the guilt of the claimants but on the absence of what the voluntary arbitrator considers technically competent evidence. The award did not consider the following items technically incompetent:

- 1) Complainant Magno executed a sworn confession admitting his participation in the pilferage. (Exhibit 'A') Of course, Magno later claimed he was coerced to make the affidavit.

2) Severo Bonnet, Antonio Martinez and Perfecto Baluyot, delivery truck helpers, executed sworn confessions which implicated complainant Nicolas Icasiano as having participated in the pilferage (Exhibit '5').

3) Magno and Angeles admitted the alteration in the gate passes (Exhibits '1' to '3') and their explanations for such alterations are hardly credible. Example: . . . 'pressure of work because of heavy delivery operations on that day.' (Exhibit 'J-complainants').

These pieces of evidence should have been viewed in the light of the notoriety of South Harbor for pilferages. Even cars and bulldozers could be pilfered or smuggled out of South Harbor. In short, the voluntary arbitrator should have taken notice of these notorious practices and considered them in assessing the evidence adduced during the hearing.

Moreover, the complainants in this case were engaged in activities informed with trust and confidence; two of them were checkers and one was a gate inspector.

With the pieces of evidence mentioned above, is it reasonable to expect management to keep them in its employ with peace of mind? For management to have peace of mind with complainants, management would have to hire other people to watch on them.

It therefore does not seem reasonable to order management to keep complainants in its employ, much less to give them backwages. But as the voluntary arbitrator said, management was not able to present technically competent evidence necessary to establish the guilt of the complainants. Therefore, it does not seem unreasonable to ask management to pay them separation pay.

Definitely, management had reasons to suspend and later terminate complainants, although such reasons may not be technically competent. Therefore, an order for backwages cannot stand. On the other hand, we like to uphold the view of the voluntary arbitrator that the evidence adduced was not technically competent - at least not sufficient to convict them in court of law."

Because the NLRC did not set out its findings of facts upon which it based its decisions, there is no clear-cut basis for its ruling that petitioner should be dismissed from employment; more so because the apparent reason for the dismissal is loss of confidence. On this ground for dismissal, in *Commercial Motors Corporation v. Commissioners, NLRC*, [19] the Court, through now Chief Justice Narvasa, said:

"Now, there is no gainsaying that loss of confidence is a recognized ground for the discharge of an employee from employment. But such a ground must be founded from facts established by substantial evidence. And the burden of establishing such facts as reasonably cause loss of confidence in an employee - such facts as reasonably generate belief by the employer that the employee is connected with some misconduct and the nature of his participation therein is such as to render him unworthy of the trust and confidence demanded of his position - is on the employer. The fact that the employee has been absolved in a criminal prosecution involving said misconduct does not preclude the employer from attempting to prove the same before the labor arbiter or the latter from accepting that evidence as sufficient foundation for a finding of lawful termination of employment. Withal, the employer's evidence, although not required to be of such degree as is required in criminal cases, i.e., proof beyond reasonable doubt, must be substantial, must clearly and convincingly establish the facts upon which loss of confidence in the employee may fairly be made to rest."

It may be added that the failure of the employer to prove a just and valid cause to dismiss the employee results in a finding that the dismissal is unjustified.[20]

In the case at bar, the voluntary arbitrator found no direct evidence linking Demetrio Angeles and petitioner Icasiano to the alleged falsification. While there is a clear discrepancy in the original gate passes and the respective security copies thereof, these discrepancies do not spell out falsification in the absence of further evidence to show which one speaks the truth. The voluntary arbitrator correctly gave scant consideration to the

testimonies of the alleged co-conspirators on the ground that said testimonies were hearsay pieces of evidence since they were not present when the alterations were made nor were they presented to testify and subjected to cross-examination.

The NLRC's reliance on the said hearsay testimonies and its suggestion that the "notoriety of South Harbor for pilferages" should be considered in assessing the evidence adduced during the hearing reflect a dangerous propensity for baseless conclusions which amount to grave abuse of discretion. It should have a factual basis for upholding the dismissal. Since there was none in this case, the least it could have done was to consider the dismissal illegal. Apparently, in its effort to stave off the bad publicity that had been generated by the airing of the petitioner's plight before the press, the NLRC failed to appreciate properly the facts. Thus, it failed to consider the finding of the voluntary arbitrator that it was petitioner himself who discovered the discrepancy between the actual load of the truck and the number appearing on the gate pass concerned. Thus, the voluntary arbitrator found:[21]

"x x x Parenthetically, it should be pointed out that during the trial, an attempt was made by respondents to show conspiracy between Demetrio Angeles and Nicolas Icasiano in the supposed falsification of Gate Pass No. 53797. Respondents attempted to show that Nicolas Icasiano was also the Gate Inspector involved in this gate pass. Upon review of the evidence, however, it appears that it was the gate inspector who discovered the discrepancy between the actual load of the truck and the number appearing on the gate pass concerned. This is precisely the reason why the truck was held at the exit gate and the attention of Demetrio Angeles called to the matter. Also, this is the reason which prompted Demetrio Angeles to make changes in the entries of the gate pass to make it correspond to the actual load of the truck. This certainly negates conspiracy for if there was, then Gate Inspector Nicolas Icasiano would have let the truck go without much ado. There is evidence on record that Nicolas Icasiano has been commended no less than three times (once by respondents) for intercepting and stopping several attempts to spirit away various cargoes from the pier zone in violation of law (Exhibits 'H-7', 'H-8' and 'H-9')."

As the voluntary arbitrator's findings are supported by evidence, the Court finds no grave abuse of discretion in his conclusion that herein private respondents failed to substantiate their claim that the then complainants and herein petitioner had committed acts inimical to their interests warranting their dismissal from service. This Court has no authority in certiorari proceedings to evaluate the sufficiency of evidence before a labor officer. In the absence of sufficient proof that the voluntary arbitrator gravely abused his discretion, his decision should be accorded the highest respect and finality.[22] On the other hand, since the decisions of the Secretary of Labor and the Office of the President are based on the alleged "findings" of the NLRC, they should likewise be set aside.

Considering the fact that private respondent is no longer the arrastre operator at the Manila South Harbor,[23] petitioner's reinstatement to his former position is no longer feasible.[24] An award of three years' backwages plus separation pay at the rate of one month salary for every year of service is proper.[25]

WHEREFORE, the decisions of the Office of the President, the Secretary of Labor and the National Labor Relations Commission are hereby REVERSED and SET ASIDE and that of the voluntary arbitrator REINSTATED, subject to the modifications that the award of backwages is limited to three years and in lieu of reinstatement, petitioner is GRANTED separation pay at the rate of one month's salary for every year of service. Costs against the private respondents.

SO ORDERED.

Gutierrez, Jr., (Chairman), Feliciano, Bidin, and Davide, Jr., JJ., concur.

- [1] NLRC Case No. 0642-A.
- [2] Annex "A" to Petition; Rollo, pp. 49-50.
- [3] Annex "L" to Petition; Rollo, p. 126.
- [4] Annex "Q" to Petition; Rollo, p. 141.
- [5] Annex "S" to Petition; Rollo, p. 145.
- [6] Annex "V" to Petition.; Rollo, p. 161
- [7] Annex "W" to Petition; Rollo, pp. 162-165.
- [8] Annex "Z" to Petition; Rollo, p.190.
- [9] Petitioner's Memorandum; Rollo, p. 361.
- [10] Petition, p. 13; Rollo, p. 15.
- [11] Petitioner's Memorandum; Rollo, pp. 333-336.
- [12] Memorandum for Public Respondents, Rollo, pp. 271-272; Memo-randum for Private Respondents, Rollo, pp. 298-299.
- [13] Ibid, pp. 273-276 and pp. 303-306.
- [14] NLRC Decision, p. 2; Rollo p. 123.
- [15] Ibid. pp. 3 & 124.
- [16] Secretary Ople was then abroad (Rollo, p. 154).
- [17] L-49711, November 7, 1979, 94 SCRA 261, 267.
- [18] Petitioner's Memorandum, p. 7; Rollo, p. 321.
- [19] G.R. No. 74762, December 10, 1990, 192 SCRA 191, 196.
- [20] Chua-Qua v. Clave, G.R. No. 49549, August 30, 1990, 189 SCRA 117.
- [21] Decision of the Voluntary Arbitrator, pp. 15-16; Rollo, pp. 45-46.
- [22] Eternit Employees and Workers Union v. De Veyra, G.R. No. 50110, September 21, 1990, 189 SCRA 752.
- [23] Rollo, p. 382.
- [24] Petitioner was first connected with the port terminal service in 1934. Except during the war years (1942-45), he had continu-ously served as manifest clerk of the Manila Port Service, in-spector of the Philippine Ports Terminal and gate inspector of Delgado Bros., Inc., and Manila Port Service, Customs Arrastre Service. In 1966 he was employed by E.Razon, Inc. as gate inspector until his dismissal from employment (Rollo, p. 95).
- [25] St. Louis College of Tuguegarao v. NLRC, G.R. No. 74214, August 31, 1989, 177 SCRA 151.

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