

LIBERATO SAN ANTONIO, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, PEPSI-COLA DISTRIBUTORS OF THE PHILIPPINES, EDUARDO M. VILLANUEVA, ALBERTO M. DACUYCUI, RENE J. NERI, ...

G.R. No. 100829. November 28, 1995

Ponente: VITUG, J.

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VITUG, J.:

In 1984, petitioner Liberato M. San Antonio was so hired as a branch personnel manager by Pepsi-Cola Bottling Company of the Philippines, Inc. ("PCBCPI"). A resident of Muntinlupa, Metro Manila, petitioner's initial station was at the company's premier plant in Quezon City. In May, of the same year, he was assigned to the Zamboanga City plant. About a year later,[1] he was transferred to the company's plant in Rosario, La Union. In September 1985, he was sent to San Fernando, La Union,[2] and in April 1986, he was returned to Quezon City. On 01 July 1986, his salary was increased (to P8,960.00) on account of his "above average" performance.[3]

On 26 August 1986, Edgardo M. Noblejas, senior personnel manager of Pepsi-Cola Distributors of the Philippines, Inc. ("PCDPI"), sent petitioner an inter-office correspondence, captioned "In Re: Transfer," which read:

"As per advice by H.O., you are to report to Atty. Sam Dorillo at H.O. effective August 27, 1986." [4]

In response to this directive, petitioner sent Noblejas a letter, dated 27 August 1986, in this tenor:

"This refers to your memo dated yesterday addressed to the undersigned which I received today, advising me to report starting today to Atty. Sam P. Dorillo at Home Office.

"I would like to request deferment of said transfer until such time as I am advised of the reason/s for transfer, the position I am supposed to assume and the terms and conditions relative thereto. Please note that as far as I know, I have not been charged of any offense that will warrant my relief from my present position as Personnel Manager for Quezon City Plant and furthermore, the position I am occupying has not been declared as redundant.

"Please advise on your decision." [5]

In a curt reply made on the same day by the company, petitioner's request for deferment of transfer was denied; viz:

"Please be advised that your request for deferment to report to Atty. Sam Dorillo at Home Office has been denied.

"Comply accordingly to instruction of August 26, 1986." [6]

The request for deferment of his transfer to the "home office," petitioner said, was impelled by an announcement of the firm's president, Eduardo M. Villanueva, contained in a radio message, dated 02 July

1986, limiting the Home Office personnel functions to only cover (a) compensation and benefits administration for exempt personnel; (b) personnel services for home office employees; (c) personnel policies and administration, and (d) recruitment of key personnel.[7] A second communication, dated 23 July 1986, from President Villanueva further reduced the work load of the Home Office Personnel Administration office "strictly" to: (a) compensation, benefits and records administration; (b) recruitment and training; and (c) personnel policies, systems and guidelines; and designated A. Viray, S. Amistoso and S. Dorillo to oversee these responsibilities.[8]

On 11 August 1986, Jose I. Umali, one of the company's top managers, offered petitioner a lump sum salary payment of three (3) months, plus accrued and earned benefits, should petitioner agree to resign from the company. Petitioner sought Atty. Emerito M. Salva of the Salva Villanueva & Valera Law Offices, the retained counsel of the sales employees' union in the company, for legal advice. Atty. Salva suggested that petitioner should defer compliance with the transfer order and request from the company the details of his new work assignment.

In the meantime, petitioner went on sick leave from 28 August 1986 until 13 September 1986.[9] On 01 September 1986, Atty. Salva wrote the company president a letter; in part, it read:

"In view of the foregoing circumstances, we are serving notice upon the company that we have advised our client, Mr. San Antonio, not to comply with your directive to report to a certain Atty. Sam Dorillo until his request above stated is complied with. This is necessary for the reason that he has discretion to accept or not to accept the position being offered and determine the duties and functions he may not like or be able to discharge. Such decision or option which he can exercise are protected by existing labor laws.

"We are requesting therefore that you please comply with the request of our client requesting information as to what position he is being assigned, the duties and functions, etc. he will discharge, the benefits he may receive under such position so that he can intelligently decide whether to accept or not. If his request is denied within five (5) days from receipt hereof or if you do not favor us with a reply, please be advised that we will resort to all legal remedies to protect the interest of our client including claims against your company and its officials responsible therefor, of all damages as a consequence of his being harassed, moved and/or transferred to another position in violation of his rights."[10]

In a letter addressed to petitioner on 04 September 1986, the Plant General Manager, Alberto M. Dacuycuy, replied:

"x x x. The said letter contains imaginary, malicious and unfounded accusations against the Company and its officers. Worst of all is that, your retained counsel is also the existing counsel of the sales employee's union at the plant to which you are assigned as Personnel Manager. These incidents are all indications and/or proof of your serious breach of the trust and confidence reposed upon you by the Company.

"In view thereof, you are hereby required to submit to the undersigned, within three (3) days from receipt of this letter, your written explanation why no severe disciplinary action should be taken against you by the Company. Your failure to do so will leave us with no recourse but to act on your case based on records at hand."[11]

Petitioner, in his compliance of 10 September 1986 with the above directive, explained (1) that he engaged the legal services of Atty. Salva in order to safeguard his employment rights; (2) that his work with the company was his means of livelihood which he naturally wanted to protect by hiring a lawyer of his own choice; (3) that there was "no possible information, secret, or any other matter, confidential and otherwise" regarding the company which he could possibly convey to Atty. Salva "except data and information for the protection of (his) employment;" and (4) that the attorney of record of the Pepsi-Cola Sales and Advertising Union ("PSAU") was Atty. E. Magno C. Salva and not Atty. Emerito M. Salva.[12]

When he returned to work on 15 September 1986, petitioner found himself stripped of any authority to sign official documents, and that he could only act in the absence of the senior personnel manager. On 19 September 1986, petitioner filed with the National Labor Relations Commission ("NLRC") a complaint for injunction and damages, with prayer for preliminary prohibitory and/or mandatory injunction, aimed principally at preventing the company from either dismissing him or discriminating against him.[13] Ultimately, he received later that afternoon a letter, dated 18 September 1986, from Dacuyucuy stating that the company had found him (petitioner) "guilty" of offenses, i.e., willful disobedience of the lawful orders of his superior and willful breach of trust and confidence, so prescribed as just causes for dismissal by Article 283 (282) of the Labor Code. Petitioner was informed that he should thus consider himself dismissed from the service effective upon receipt of the letter.

On 13 January 1987, petitioner filed a complaint for illegal dismissal, plus damages, with the NLRC (NLRC NCR Case No. 1-157-87).

On 28 February 1989, Labor Arbiter Donato G. Quinto, Jr., rendered a decision ordering the company to reinstate petitioner to his former position "without loss of seniority rights and with full backwages but not to exceed three (3) years without qualification and deduction." The Labor Arbiter rationalized that petitioner evidently did not have the "slightest intention" to disobey the company's lawful order; however, the Labor Arbiter found no sufficient factual basis for the grant of damages.[14]

Both parties appealed to the NLRC. Petitioner focused on the issues of damages and attorney's fees[15] while the company insisted on the total dismissal of the complaint.

On 17 May 1991, the NLRC disposed[16] of the appeal, as follows:

"WHEREFORE, premises considered, the appealed order is hereby MODIFIED. Respondent is hereby ordered to pay complainant his separation pay computed at one month's pay for every year of service.

"SO ORDERED."[17]

The NLRC, on the strength of the ruling in *Philippine Japan Active Carbon Corporation v. NLRC*[18] upholding the employer's right to transfer or reassign employees, held that "even on the assumption that the transfer would affect his security of tenure, such does not give a vested right as to curtail the exercise of respondent's prerogative to transfer employees."

Petitioner's motion for the reconsideration of the decision, having been denied for lack of merit,[19] the instant petition for certiorari was filed.

There is partial merit in the petition.

The Court is not prepared to conclude that petitioner has been guilty of willful disobedience in failing to comply posthaste with the transfer order. In *Gold City Integrated Port Services, Inc. v. NLRC*,[20] the Court, on the subject "wilful disobedience," has explained:

"Wilful disobedience of the employer's lawful orders, as a just cause for the dismissal of an employee, envisages the concurrence of at least two (2) requisites: the employee's assailed conduct must have been wilful or intentional, the wilfulness being characterized by a 'wrongful and perverse attitude'; and the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge."[21]

While petitioner's request for deferment of his transfer might have so appeared to the company as an act of insolence, it cannot, however, be anywhere close to being "wrongful and perverse." The right to transfer or reassign an employee is recognized as an employer's right[22] but, like other similar prerogatives, such right is

subject to limitations arising from law, contract or general principles of fair play and justice. Jurisprudence proscribes, for instance, transfers or reassignments of employees when such acts are considered to be unreasonable or would cause undue inconvenience to them.[23] The company now belatedly explains that petitioner had to be transferred because his services were needed to conduct a special study that could ferret out the reasons behind the labor union's recent threat of strike. If it were so, it is quite difficult to believe why petitioner was not then so accordingly informed; it could have, almost surely, avoided the misunderstanding.

A company position, such as that which petitioner has occupied, truly requires the full trust and confidence of the employer in the exercise of discretion and judgment on the part of the employee-manager.[24] Employers are consequently given wide latitude of discretion in terminating the employment of managerial employees on the ground of lack of trust and confidence.[25] Even then, however, loss of confidence must rest, to be a valid cause for terminating an employment, on actual breach of duty committed by the employee and not merely on the employer's imagined whim or caprice.[26] The act upon which the loss of trust is predicated must be related to the performance of the duties of the employee such as would thereby show him to be indeed unfit to continue working for the employer.[27] In essence subjective,[28] it, nevertheless, requires adequate basis or proof[29] to support it, and the burden lies on the employer to convincingly establish that fact.[30]

The company dismissed petitioner because the latter, in questioning his transfer to another plant, sought the advice of the lawyer of one of the contending labor unions in the company. To the employer, that act spoke for itself. The NLRC observed that while there might have been nothing unlawful in complainant's hiring the union's counsel, respondent had viewed such relationship, nevertheless, with apprehension.[31] What then clearly stood out to be the case was that petitioner and the company had both been pervaded by mere suspicion and, there being no real and solid basis to adjudge otherwise, the impasse ineluctably should be resolved in favor of the worker[32] in keeping with the constitutionally guaranteed security of tenure of the employee.[33]

Furthermore, the rudiments of due process cannot be lightly ignored. Proper compliance with the twin requirements of notice and hearing are conditions sine qua non before a dismissal may be validly effected.[34] Elucidating, the Court, in *Pepsi-Cola Bottling Co. v. NLRC*,[35] explained:

"The law requires that the employer must furnish the worker sought to be dismissed with two (2) written notices before termination of employment can be legally effected: (1) notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the subsequent notice which informs the employee of the employer's decision to dismiss him (Sec. 13, BP 130; Sec. 2-6 Rule XIV, Book V, Rules and Regulations Implementing the Labor Code as amended). Failure to comply with the requirements taints the dismissal with illegality. This procedure is mandatory; in the absence of which, any judgment reached by management is void and inexistent."

The second notice must be given the employee after due hearing.[36] The hearing requirement is not to be considered a mere technicality but one of substance to which every employee is entitled in order to at all times assure that the employer's prerogative to dismiss or lay-off is not abused or exercised in an arbitrary manner.[37] Consultations and conferences may not be valid substitutes for actual observance of notice and hearing.[38] Any procedural shortcut, that effectively allows an employer to assume the roles of both accuser and judge at the same time, should not be countenanced.[39] Not excluded from the rule are confidential and managerial employees; they themselves cannot be arbitrarily dismissed without such just causes as must be reasonably established in appropriate investigations.[40]

Shortly after petitioner, in compliance with the company's directive, had explained why he should not be disciplinarily dealt with, he received forthwith the company's "decision" dismissing him from employment. No hearing, or a semblance thereof, was conducted apparently because the company believed that the case was res

ipsa loquitur in character.

The dismissal of petitioner being thus infirm, his reinstatement would so ordinarily follow as a matter of course. In this regard, the company avers that reinstatement is obscured by the new ownership of the company. Relevant to this allegation is the observation of the Court in *Pepsi-Cola Bottling Co. v. NLRC*;^[41] thus:

"Pepsi-Cola Distributors of the Philippines may have ceased business operations and Pepsi-Cola Products Philippines, Inc. may be a new company but it does not necessarily follow that no one may now be held liable for illegal acts committed by the earlier firm. The complaint was filed when PCD was still in existence. Pepsi-Cola never stopped doing business in the Philippines. The same soft drinks products sold in 1988 when the complaint was initiated continue to be sold now. The sale of products, purchases of materials, payment of obligations, and other business acts did not stop at the time PCD bowed out and PCPPI came into being. There is no evidence presented showing that PCPPI, as the new entity or purchasing company is free from any liabilities incurred by the former corporation." (Italics supplied.)

That, in fact, the "new" company has absorbed all the employees of PCDPI is shown by the following excerpt from the Pepsigram, the company newspaper; viz:

"The more than 5,000 employees of the two former Pepsi companies — the Pepsi Cola Bottling Company of the Philippines, Inc. and Pepsi Cola Distributors Philippines, Inc. — remain intact under the new management. Also preserved are all assets of Pepsi's 13 local bottling plants, about 1,300 transport vehicles and 73 warehouses nationwide."^[42] (Italics supplied.)

The Court is convinced, nevertheless, that the employer-employee relationship between the herein parties is now strained; reinstatement would thus be impractical.

Contrary to his claim, petitioner may not be allowed the benefit of full backwages from the time of his separation from employment provided for in Republic Act No. 6517, since this controversy has occurred prior to the effectivity of the law on 21 March 1989.^[43] Following the *Mercury Drug* rule,^[44] he shall be allowed backwages equivalent to three years only albeit without any qualification or deduction. No facts have been sufficiently established to warrant any award of damages.

WHEREFORE, the decision of the NLRC is AFFIRMED with the MODIFICATION that, in addition to the separation pay awarded by the Commission in lieu of reinstatement, petitioner is likewise granted backwages equivalent to three (3) years without qualifications or deductions. No pronouncement on costs.

SO ORDERED.

Feliciano, (Chairman), Romero and Melo, JJ., concur.

Panganiban, J., took no part., his daughter is a management officer if Pepsi Cola head office in NY.

[1] Meanwhile, on 25 March 1985, Pepsi Company, Inc., mother company of PCBCPI, sold all its assets in its bottling operations to Pepsi-Cola Distributors of the Philippines, Inc. ("PCDPI"). The latter company retained petitioner.

[2] Rollo, p. 12.

[3] Ibid., p. 539 & 97.

[4] Ibid., p. 95.

[5] Ibid., p. 96.

[6] Ibid., p. 163.

[7] Ibid., p. 104.

[8] Ibid., p.103.

[9] Ibid., p. 163.

[10] Ibid., p. 98.

[11] Ibid., p. 100.

[12] Ibid., pp. 101-102.

[13] Ibid., p. 77.

[14] Ibid., p. 174.

[15] Ibid., p. 175.

[16] Penned by Commissioner Domingo H. Zapanta and concurred in by Presiding Commissioner Edna Bonto-Perez and Commissioner Rustico L. Diokno.

[17] Rollo, p. 258.

[18] 171 SCRA 164.

[19] Ibid., p. 296.

[20] 189 SCRA 811, 816-817.

[21] Quoted in *Mañebo v. NLRC*, 229 SCRA 240, 249-250.

[22] *Abbot Laboratories (Phils.) Inc. v. NLRC*, 154 SCRA 713, 717.

[23] *Chu v. NLRC*, 232 SCRA 764, 768 citing *Philippine Japan Active Carbon Corp. vs. NLRC*, 171 SCRA 164.

[24] *Golden Donuts, Inc. v. NLRC*, 230 SCRA 153, 162-163.

[25] *Villarama v. NLRC*, 236 SCRA 280, 289.

[26] *Estiva v. NLRC*, 225 SCRA 169, 177 citing *Imperial Textile Mills, Inc. v. NLRC*, 217 SCRA 237.

[27] *Aris Philippines, Inc. v. NLRC*, 238 SCRA 59.

[28] *Hernandez v. NLRC*, 176 SCRA 269, 276 citing *Acda v. Minister of Labor*, 119 SCRA 306.

[29] *Estiva v. NLRC*, *supra*, citing *PNOC-Energy Development Corporation v. NLRC*, 201 SCRA 487 and *De Vera v. NLRC*, 200 SCRA 439.

[30] *Mapalo v. NLRC*, 233 SCRA 266, 271.

[31] Decision, p. 12.

[32] Art. 4. Construction in favor of labor. - All doubts in the implementation and interpretation of the provisions of this Code, including its implementing rules and regulations, shall be resolved in favor of labor (Labor Code).

[33] *De Ysasi Ill v. NLRC*, 231 SCRA 173, 195.

[34] Segismundo v. NLRC, 239 SCRA 167, 172 citing Mañebo v. NLRC, supra and Tiu v. NLRC, 215 SCRA 540.

[35] 210 SCRA 277, 286.

[36] Estiva v. NLRC, supra at p. 175.

[37] Kingsize Manufacturing Corporation v. NLRC, 238 SCRA 349, 357.

[38] Pepsi-Cola Bottling Co. v. NLRC, supra at p. 287.

[39] See: Alhambra Industries, Inc. v. NLRC, 238 SCRA 232, 238.

[40] Inter-Orient Maritime Enterprises, Inc. v. NLRC, 235 SCRA 268, 275.

[41] Supra at pp. 287-288.

[42] Rollo, p. 450.

[43] Maranaw Hotel Resort Corporation v. NLRC, 238 SCRA 190, 197.

[44] Guatson International Travel and Tours, Inc. v. NLRC, 230 SCRA 815, 823.

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