

ALEX FERRER, RAFAEL FERRER, HENRY DIAZ, DOMINGO BANCOLITA, GIL DE GUZMAN, AND FEDERATION OF DEMOCRATIC LABOR UNIONS, (FEDLU), PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSIO...

G.R. No. 100898. July 05, 1993

Ponente: MELO, J.

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MELO, J.:

The petition for certiorari before us seeks to annul and set aside: (a) the decision dated June 20, 1991 of the Second Division of the National Labor Relations Commission (NLRC) (Penned by Commissioner Rustico L. Diokno and concurred in by Presiding Commissioner Edna Bonto-Perez and Commissioner Domingo H. Zapanta) which affirmed in toto the decision of April 5, 1990 of Labor Arbiter Eduardo J. Carpio dismissing the complaint for illegal dismissal and unfair labor practice on the ground that both the company, and the union merely complied with the collective bargaining agreement provision sanctioning the termination of any employee who fails to retain membership in good standing with the union; and (b) the NLRC resolution denying the motion for the reconsideration of said decision (NLRC NCR Case No. 00-10-04855-89).

Petitioners were regular and permanent employees of the Occidental Foundry Corporation (OFC) in Malanday, Valenzuela, Metro Manila which was under the management of Hui Kam Chang. As piece workers, petitioners' earnings ranged from P110 to P140 a day. They had been in the employ of OFC for about ten years at the time of their dismissal in 1989 (p. 38, Rollo).

On January 5, 1989, the Samahang Manggagawa ng Occidental Foundry Corporation-FFW (SAMAHAN) and the OFC entered into a collective bargaining agreement (CBA) which would be effective for the three-year period between October 1, 1988 and September 30, 1991 (Memorandum for OFC and Hui Kam Chang, p. 6, Rollo; p. 551). Article II thereof provides for a union security clause thus:

Section 1 - The company agrees that all permanent and regular factory workers in the company who are members in good standing of the union or who thereafter may become members, shall as a condition of continued employment, maintain their membership in the union in good standing for the duration of the agreement.

x x x x x x x x

Section 3 - The parties agree that failure to retain membership in good standing with the UNION shall be ground for the operation of paragraph 1 hereof and the dismissal by the company of the aforesaid employee upon written request by the union. The aforesaid request shall be accompanied by a verified carbon original of the Board of (sic) Resolution by the UNION signed by at least a majority of its officers/directors. (p. 562, Rollo.)

On May 6, 1989, petitioner Alex Ferrer and the SAMAHAN, filed in the Department of Labor and Employment

(DOLE), a complaint for the expulsion from SAMAHAN of the following officers: Genaro Capitle (president), Jesus Tumagan (vice-president), Godofredo Pacheco (auditor), and Marcelino Pacheco (board member) (Case No. NCR-00-M-89-11-01). The complaint was founded on said officers' alleged inattentiveness to the economic demands of the workers. However, on September 4, 1989, petitioners Diaz and Alex Ferrer withdrew the petition (p. 590, Rollo).

On September 10, 1989, petitioners conducted a special election of officers of the SAMAHAN (pp. 205 & 583, Rollo). Said election was, however, later questioned by the FFW. Nonetheless, the elected set of officers tried to dissuade the OFC from remitting union dues to the officers led by Capitle who were allied with the FFW. Later, however, Romulo Erlano, one of the officers elected at the special election, manifested to the DOLE that he was no longer objecting to the remittance of union dues to the officers led by Capitle. Petitioners' move to stage a strike based on economic demands was also later disowned by members of the SAMAHAN.

The intraunion squabble came to a head when, on September 11, 1989, a resolution expelling petitioners from the SAMAHAN was issued by the aforesaid union officials headed by Capitle, together with board members George Ignas, Pio Domingo, and Jaime Baynado (pp. 286 & 599, Rollo). The following day, Capitle sent OFC the following letter:

12 September 1989

Mr. Hui Kam Chang

General Manager

Malanday, Valenzuela

Metro Manila

Dear Mr. Chang:

In compliance with Article II, Sec. 3 of the Union Security Clause as enunciated in our Collective Bargaining Agreement, I would like you to dismiss the following employees on the ground of failure to retain membership in good standing:

1. Alex Ferrer
2. Gil de Guzman
3. Henry Diaz
4. Domingo Bancolita
5. Rafael Ferrer, Jr.

Attached herewith is the verified carbon original of the Board Resolution of the union signed by the majority of its officers/directors.

Thank you very much.

Very truly yours,

(Sgd.)

GENARO CAPITLE

President

(p. 66, Rollo.)

Although petitioners received this letter weeks after its date, it appears that on that same date, they had learned about their dismissal from employment as shown by the letter also dated September 13, 1989 which they sent the Federation of Democratic Labor Unions (FEDLU). They volunteered therein to be admitted as members of the FEDLU and requested that they be represented (“katawanin”) by said federation before the DOLE in the complaint which they intended to file against the union (SAMAHAN), the FFW and the company for illegal dismissal, reinstatement, and other benefits in accordance with law (p. 74, Rollo).

Thereafter, on various dates, petitioners sent individual letters to Hui Kam Chang professing innocence of the charges levelled against them by the SAMAHAN and the FFW and pleading that they be reinstated (pp. 69-73, Rollo). Their letters appear to have elicited no response.

Thus, contending that their dismissal was without cause and in utter disregard of their right to due process of law, petitioners, through the FEDLU, filed a complaint for illegal dismissal and unfair labor practice before the NLRC against Hui Kam Chang, OFC, Macedonio S. Velasco (as representative of the FFW), the FFW, and the SAMAHAN officers headed by Capitle (p. 75, Rollo).

In due course, after the case was ventilated through position papers and other documents, the labor arbiter rendered a decision dismissing petitioners’ complaint (pp. 79-89, Rollo). He found that in dismissing petitioners, OFC was “merely complying with the mandatory provisions of the CBA - the law between it and the union.” He added:

To register compliance with the said covenant, all that is necessary is a written request of the union requesting dismissal of the employees who have failed to retain membership in good standing with the union. The matter or question, therefore, of determining why and how did complainants fail to retain membership in good standing is not for the company to inquire via formal investigation. By having the request of the union, a legal presumption that the request was born out of a formal inquiry by the union that subject employees failed to retain membership in good standing, failed to exist. This means generally that where a valid closed shop or similar agreement is in force with respect to a particular bargaining unit as in the case a quo, the employer shall refuse to employ any person unless he is a member of the majority union and the employer shall dismiss employees who fail to retain their membership in the majority union. This must be deemed a just cause recognized by law and jurisprudence. The effect is discrimination to encourage membership in other unions. (pp. 86-87, Rollo.)

Hence, the labor arbiter concluded, the dismissal of petitioners was an exercise of legitimate management prerogative which cannot be considered as an unfair labor practice. On whether the SAMAHAN and the FFW could be held liable for illegal dismissal and unfair labor practice, the arbiter opined that since there was no employer-employee relationship between petitioners and respondent unions, the complaint against the latter has no factual and legal bases, because petitioners “should not have confused expulsion from membership in the union as one and the same incident to their subsequent employment termination.”

Consequently, petitioners appealed to the NLRC on the grounds that there was prima facie evidence of abuse of discretion on the part of the labor arbiter and that he committed serious errors in his findings of facts.

On June 20, 1991, the NLRC rendered the herein questioned decision affirming in toto the decision of the labor arbiter. Petitioners’ motion for the reconsideration of the NLRC decision having been denied, they resorted to the instant petition for certiorari which presents the issue of whether or not respondent Commission gravely abused its discretion in affirming the decision of the labor arbiter which is allegedly in defiance of the elementary principles of procedural due process as the petitioners were summarily dismissed from employment without an investigation

having been conducted by the OFC on the veracity of the allegation of the SAMAHAN-FFW that they violated the CBA.

A CBA is the law between the company and the union and compliance therewith is mandated by the express policy to give protection to labor. Said policy should be given paramount consideration unless otherwise provided for by law (*Meycauayan College vs. Drilon*, 185 SCRA 50 [1990]). A CBA provision for a closed shop is a valid form of union security and it is not a restriction on the right or freedom of association guaranteed by the Constitution (*Lirag Textile Mills, Inc. vs. Blanco*, 109 SCRA 87 [1981]). However, in the implementation of the provisions of the CBA, both parties thereto should see to it that no right is violated or impaired. In the case at bar, while it is true that the CBA between OFC and the SAMAHAN provided for the dismissal of employees who have not maintained their membership in the union, the manner in which the dismissal was enforced left much to be desired in terms of respect for the right of petitioners to procedural due process.

In the first place, the union has a specific provision for the permanent or temporary “expulsion” of its erring members in its constitution and by-laws (“saligang batas at alituntunin”). Under the heading membership and removal (“pag-aanib at pagtitiwalag”), it states:

Sec. 4. Ang sinumang kasapi ay maaring itwalag (sic) ng Samahan pangsamantala o tuluyan sa pamamgitan (sic) ng tatlo't ikaapat (3/4) na bahagi ng dami ng bilang ng Pamunuang Tagapagpaganap. Pagkaraan lamang sa pandinig sa kanyang kaso. Batay sa sumusunod:

- (a) Sinumang gumawa ng mga bagay bagay na labag at lihis sa patakaran ng Samahan.
- (b) Sinumang gumawa ng mga bagay na maaaring ikabuwag ng Samahan.
- (c) Hindi paghuhulog ng butaw sa loob ng tatlong buwan na walang sakit o Doctor's Certificate.
- (d) Hindi pagbibigay ng abuloy na itinatadhana ng Samahan.
- (e) Sinumang kasapi na natanggal sa kapisanan at gustong sumapi uli ay magpapanibago ng bilang, mula sa taon ng kanyang pagsapi uli sa Samahan. (Underscoring supplied; *Ibid.*, p. 177).

No hearing (“pandinig”) was ever conducted by the SAMAHAN to look into petitioners' explanation of their moves to oust the union leadership under Capitle, or their subsequent affiliation with FEDLU. While it is true that petitioners' actions might have precipitated divisiveness and, later, showed disloyalty to the union, still, the SAMAHAN should have observed its own constitution and by-laws by giving petitioners an opportunity to air their side and explain their moves. If, after an investigation the petitioners were found to have violated union rules, then and only then should they be subjected to proper disciplinary measures.

Here lies the distinction between the facts of this case and that of *Cariño vs. NLRC* (185 SCRA 177 [1990]) upon which the Solicitor General heavily relies in supporting the stand of petitioners. In *Cariño*, the erring union official was given the chance to answer the complaints against him before an investigating committee created for that purpose. On the other hand, herein petitioners were not given even one opportunity to explain their side in the controversy. This procedural lapse should not have been overlooked considering the union security provision of the CBA.

What aggravated the situation in this case is the fact that OFC itself took for granted that the SAMAHAN had actually conducted an inquiry and considered the CBA provision for the closed shop as self-operating that, upon receipt of a notice that some members of the SAMAHAN had failed to maintain their membership in good standing in accordance with the CBA, it summarily dismissed petitioners. To make matters worse, the labor arbiter and the NLRC shared the same view in holding that “(t)he matter or question, therefore, of determining

why and how did complainants fail to retain membership in good standing is not for the company to inquire via formal investigation” (pp. 87 & 135, Rollo). In this regard, the following words of my learned brother, Mr. Justice Feliciano, in the Resolution in Cariño are apt:

4. Turning now to the involvement of the Company in the dismissal of petitioner Cariño, we note that the Company upon being formally advised in writing of the expulsion of petitioner Cariño from the Union, in turn simply issued a termination letter to Cariño, the termination being made effective the very next day. We believe that the Company should have given petitioner Cariño an opportunity to explain his side of the controversy with the Union. Notwithstanding the Union’s Security Clause in the CBA, the Company should have reasonably satisfied itself by its own inquiry that the Union had not been merely acting arbitrarily and capriciously in impeaching and expelling petitioner Cariño...

x x x

x x x

x x x

5. We conclude that the Company had failed to accord to petitioner Cariño the latter’s right to procedural due process. The right of an employee to be informed of the charges against him and to reasonable opportunity to present his side in a controversy with either the Company or his own Union, is not wiped away by a Union Security Clause or a Union Shop Clause in a CBA. An employee is entitled to be protected not only from a company which disregards his rights but also from his own Union the leadership of which could yield to the temptation of swift and arbitrary expulsion from membership and hence dismissal from his job. (pp. 186 & 189.)

The need for a company investigation is founded on the consistent ruling of this Court that the twin requirements of notice and hearing which are essential elements of due process must be met in employment-termination cases. The employee concerned must be notified of the employer’s intent to dismiss him and of the reason or reasons for the proposed dismissal. The hearing affords the employee an opportunity to answer the charge or charges against him and to defend himself therefrom before dismissal is effected (*Kwikway Engineering Works vs. NLRC*, 195 SCRA 526 [1991]; *Salaw vs. NLRC*, 202 SCRA 7 [1991]). Observance to the letter of company rules on investigation of an employee about to be dismissed is not mandatory. It is enough that there is due notice and hearing before a decision to dismiss is made (*Mendoza vs. NLRC*, 195 SCRA 606 [1991]). But even if no hearing is conducted, the requirement of due process would have been met where a chance to explain a party’s side of the controversy had been accorded him (*Philippine Airlines, Inc. vs. NLRC*, 198 SCRA 748 [1991]).

If an employee may be considered illegally dismissed because he was not accorded fair investigation (*Hellenic Philippine Shipping vs. Siete*, 195 SCRA 179 [1991]), the more reason there is to strike down as an inexcusable and disdainful rejection of due process a situation where there is no investigation at all (See: *Colegio del Sto. Niño vs. NLRC*, 197 SCRA 611 [1991]; *Artex Development Co., Inc. vs. NLRC*, 187 SCRA 611 [1990]). The need for the observance of an employee’s right to procedural due process in termination cases cannot be overemphasized. After all, one’s employment, profession, trade, or calling is a “property right” and the wrongful interference therewith gives rise to an actionable wrong (*Callanta vs. Carnation Philippines, Inc.*, 145 SCRA 268 [1986]). Verily, a man’s right to his labor is property within the meaning of constitutional guarantees which he cannot be deprived of without due process (*Batangas Laguna Tayabas Bus Co. vs. Court of Appeals*, 71 SCRA 470 [1976]).

While the law recognizes the right of an employer to dismiss employees in warranted cases, it frowns upon arbitrariness as when employees are not accorded due process (*Tan, Jr. vs. NLRC*, 183 SCRA 651 [1990]). Thus, the prerogatives of the OFC to dismiss petitioners should not have been whimsically done for it unduly exposed

itself to a charge of unfair labor practice for dismissing petitioners in line with the closed shop provision of the CBA, without a proper hearing (*Tropical Hut Employees' Union-CGW vs. Tropical Hut Food Market, Inc.*, 181 SCRA 173 [1990]; citing *Binalbagan-Isabela Sugar Co., Inc. (BISCOM) vs. Philippine Association of Free Labor Unions (PAFLU)*, 8 SCRA 700 [1983]). Neither can the manner of dismissal be considered within the ambit of managerial prerogatives, for while termination of employment is traditionally considered a management prerogative, it is not an absolute prerogative subject as it is to limitations founded in law, the CBA, or general principles of fair play and justice (*University of Sto. Tomas vs. NLRC*, 190 SCRA 758 [1990]).

Under Rule XIV, Sections 2, 5, and 6 of the rules implementing Batas Pambansa Blg. 130, the OFC and the SAMAHAN should solidarily indemnify petitioners for the violation of their right to procedural due process (*Great Pacific Life Assurance Corporation vs. NLRC*, 187 SCRA 694 [1990], citing *Wenphil vs. NLRC*, 170 SCRA 69 [1989], *Cariño vs. NLRC*, *supra*). However, such penalty may be imposed only where the termination of employment is justified and not when the dismissal is illegal as in this case where the damages are in the form of back wages.

As earlier discussed, petitioners' alleged act of sowing disunity among the members of the SAMAHAN could have been ventilated and threshed out through a grievance procedure within the union itself. But resort to such procedure was not pursued. What actually happened in this case was that some members, including petitioners, tried to unseat the SAMAHAN leadership headed by Capitle due to the latter's alleged inattention to petitioners' demands for the implementation of the P25-wage increase which took effect on July 1, 1989. The intraunion controversy was such that petitioners even requested the FFW to intervene to facilitate the enforcement of the said wage increase (Petition, p. 54; p. 55, Rollo).

Petitioners sought the help of the FEDLU only after they had learned of the termination of their employment upon the recommendation of Capitle. Their alleged application with federations other than the FFW (Labor Arbiter's Decision, pp. 4-5; pp. 82-83, Rollo) can hardly be considered as disloyalty to the SAMAHAN, nor may the filing of such applications denote that petitioners failed to maintain in good standing their membership in the SAMAHAN. The SAMAHAN is a different entity from FFW, the federation to which it belonged. Neither may it be inferred that petitioners sought disaffiliation from the FFW for petitioners had not formed a union distinct from that of the SAMAHAN. Parenthetically, the right of a local union to disaffiliate from a federation in the absence of any provision in the federation's constitution preventing disaffiliation of a local union is legal (*People's Industrial and Commercial Employees and Workers Org. (FFW) vs. People's Industrial and Commercial Corp.*, 112 SCRA 440 [1982]). Such right is consistent with the constitutional guarantee of freedom of association (*Tropical Hut Employees' Union-CGW vs. Tropical Hut Food Market, Inc.*, 181 SCRA 173 [1990]).

Hence, while petitioners' act of holding a special ejection to oust Capitle, et al. may be considered as an act of sowing disunity among the SAMAHAN members, and, perhaps, disloyalty to the union officials, which could have been dealt with by the union as a disciplinary matter, it certainly cannot be considered as constituting disloyalty to the union. Faced with a SAMAHAN leadership which they had tried to remove as officials, it was but a natural act of self-preservation that petitioners fled to the arms of the FEDLU after the union and the OFC had tried to terminate their employment. Petitioners should not be made accountable for such an act.

With the passage of Republic Act No. 6715 which took effect on March 21, 1989, Article 279 of the Labor Code was amended to read as follows:

Security of Tenure. -- In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the

time his compensation was withheld from him up to the time of his actual reinstatement.

and as implemented by Section 3, Rule 8 of the 1990 New Rules of Procedure of the National Labor Relations Commission, it would seem that the Mercury Drug Rule (Mercury Drug Co., Inc. vs. Court of Industrial Relations, 56 SCRA 694 [1974]) which limited the award of back wages of illegally dismissed workers to three (3) years “without deduction or qualification” to obviate the need for further proceedings in the course of execution, is no longer applicable.

A legally dismissed employee may now be paid his back wages, allowances, and other benefits for the entire period he was out of work subject to the rule enunciated before the Mercury Drug Rule, which is that the employer may, however, deduct any amount which the employee may have earned during the period of his illegal termination (East Asiatic Company, Ltd. vs. Court of Industrial Relations, 40 SCRA 521 [1971]). Computation of full back wages and presentation of proof as to income earned elsewhere by the illegally dismissed employee after his termination and before actual reinstatement should be ventilated in the execution proceedings before the Labor Arbiter concordant with Section 3, Rule 8 of the 1990 new Rules of Procedure of the National Labor Relations Commission.

Inasmuch as we have ascertained in the text of this discourse that the OFC whimsically dismissed petitioners without proper hearing and has thus opened OFC to a charge of unfair labor practice, it ineluctably follows that petitioners can receive their back wages computed from the moment their compensation was withheld after their dismissal in 1989 up to the date of actual reinstatement. In such a scenario, the award of back wages can extend beyond the 3-year period fixed by the Mercury Drug Rule depending, of course, on when the employer will reinstate the employees.

It may appear that Article 279 of the Labor Code, as amended by Republic Act No. 6715, has made the employer bear a heavier burden than that pronounced in the Mercury Drug Rule, but perhaps Republic Act No. 6715 was enacted precisely for the employer to realize that the employee must be immediately restored to his former position, and to impress the idea that immediate reinstatement is tantamount to a cost-saving measure in terms of overhead expense plus incremental productivity to the company which lies in the hands of the employer.

WHEREFORE, the decision appealed from is hereby SET ASIDE and private respondents are hereby ordered to reinstate petitioners to their former or equivalent positions without loss of seniority rights and with full back wages, inclusive of allowances and other benefits or their monetary equivalent, pursuant to Article 279 of the Labor Code, as amended by Republic Act. No. 6715.

SO ORDERED.

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

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