

MARANAW HOTELS AND RESORTS CORPORATION (CENTURY PARK SHERATON MANILA), PETITIONER, VS. COURT OF APPEALS, HON. SANTIAGO O. TANADA (VOLUNTARY ARBITRATOR) AND GREGORIO GALE, RESPON...

G.R. No. 103215. November 06, 1992

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

For blurting out offensive remarks[1] against his supervisors in their absence but promptly reported to them, private respondent Gregorio Gale, a roomboy at the five-star Century Park Sheraton Manila owned and operated by petitioner Maranaw Hotels and Resorts Corporation, was dismissed for "discourtesy and use of disrespectful and impolite language against a superior which constitutes gross misconduct."

Gregorio Gale subsequently instituted a complaint for illegal dismissal which, conformably with their collective bargaining agreement, was then submitted to retired Judge Santiago O. Tañada for voluntary arbitration.

On 13 December 1989, after hearing and the submission of the evidence, position papers and memoranda of the parties, Voluntary Arbitrator Tañada rendered a decision pertinent portions of which read -

"After going over the evidence adduced by the parties, the Arbitrator finds no evidence that there was fighting, nor challenging to a fight, no assaulting nor intimidation of co-employees or supervisors within the hotel premises. What was established as per evidence on record was more of discourtesy, and use of disrespectful and impolite language uttered by complainant which falls under Section 2, Rule VI of the Rules of the Hotel and carries the penalty of 7 days of suspension for first offense. The evidence shows it was a first offense.

"IN VIEW OF THE FOREGOING, the Arbitrator finds and so holds that complainant Gregorio Gale has violated Section 2, Rule VI of the Rules of the Hotel and orders his suspension for a period of seven (7) days. However, as per admission of the parties, Mr. Gale has already been dismissed. In case complainant Mr. Gale has been out of his job as roomboy of the Hotel for more than that period of 7 days, his immediate reinstatement is hereby ordered with right to collect his share in the service charge."[2]

Its motion for reconsideration having been denied by the Voluntary Arbitrator, petitioner filed before this Court a motion for extension of time to file a petition for certiorari, which We referred to the Court of Appeals for resolution. On 24 October 1991, after taking cognizance of the case and thereafter receiving the parties' respective memoranda, the appellate court[3] dismissed the petition for lack of merit,[4] and on 4 December 1991 denied petitioner's motion for reconsideration.[5] Hence, this petition for review alleging that respondent appellate court erred in not imposing the penalty of dismissal upon private respondent considering that he was found guilty of gross misconduct, and in allowing him to collect his share in the service charge.

The petition should have been dismissed outright for We see no reason to reverse the appellate court in its finding that there was no grave abuse of discretion on the part of the Voluntary Arbitrator.

As in the case of a labor arbiter, the conclusions of a voluntary arbitrator, when they are sufficiently corroborated by the evidence on record, should similarly be respected by appellate tribunals since he is also in a vantage position to assess and evaluate the credibility of the contending parties.

We have also emphasized the rule that decisions of voluntary arbitrators are final and unappealable except when there is want of jurisdiction, grave abuse of discretion, violation of due process, denial of substantial justice, or erroneous interpretation of the law.[6] None of the exceptions lie in the case before Us.

Indeed, the discharge of an employee who uttered unfelicitous remarks against his supervisors, in general, for strictly enforcing company rules against union members, but who thereafter apologized, is too harsh. We have held time and again that it is cruel and unjust to mete out the drastic penalty of dismissal if it is not proximate to the gravity of the misdeed.[7] The reason as We concluded in *Almira v. B.F. Goodrich Philippines, Inc.*[8] is that

“(W)here a penalty less punitive would suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe. It is not only because of the law’s concern for the workingman. There is, in addition, his family to consider. Unemployment brings untold hardships and sorrows on those dependent on the wage-earner. The misery and pain attendant on the loss of jobs then could be avoided if there be acceptance of the view that under all circumstances of this case, petitioners should not be deprived of their means of livelihood. Nor is this to condone what had been done by them x x x. From the strictly juridical standpoint, it cannot be too strongly stressed, to follow Davis in his masterly work, *Discretionary Justice*, that where a decision may be made to rest on informed judgment rather than rigid rules, all the equities of the case must be accorded their due weight. Finally, labor law determinations, to quote from Bultmann, should be not only *secundum rationem* but also *secundum caritatem*.”

Thus, in *Foodmine, Incorporated v. NLRC*[9] We ruled that granting that the unsubstantiated claims of a co-employee that she was slapped on the cheek and thereafter her left breast grabbed and pulled were true, the penalty of removal from employment was not commensurate to the misconduct allegedly committed.

In *Rubberworld (Phil.), Inc. v. NLRC*[10] We said that assuming that private respondent posted entries in the stock cards without counter-checking the actual movement status of the items in the warehouse, thereby resulting in unmanageable inaccuracies in the data posted in the stock cards, his dismissal was not justified as he did not appear to be an incorrigible offender nor did his negligence cause serious damage to the company.

Then in *PT & T v. NLRC*[11] We held that even considering that there may have been valid grounds for private respondent’s discharge, the imposition of such supreme penalty would certainly be very harsh and disproportionate to the infraction committed, specially since it was his first offense.

The case at bar is akin to the aforementioned cases.

We do not agree with petitioner’s submission that private respondent’s reinstatement will not conduce to industrial peace and harmony in the hotel due to strained relations. Simply, the cases cited by petitioner are misplaced. We are not unmindful of the “strained relations” brought about by the filing of the case and the underlying causes. Indeed, relations may have become acrimonious and hostile. However, the doctrine of strained relations cannot be applied with impunity lest We trifle with the rights of wage earners by authorizing management to indiscriminately dismiss them and thereafter provide the employer with the convenient and ready excuse not to reinstate them. On the contrary, We have to exercise extreme caution in this regard. As the Court reasoned in *Globe-Mackay Cable and Radio Corporation v. NLRC*[12] -

“Obviously, the principle of ‘strained relations’ cannot be applied indiscriminately. Otherwise, reinstatement can never be possible simply because some hostility is invariably engendered between the parties as a result of

litigation. That is human nature."

Indeed, "strained relations" may be invoked only against employees whose positions demand trust and confidence, or whose differences with their employer are of such nature or degree as to preclude reinstatement. In the instant case, however, the relationship between private respondent, a roomboy, and management was clearly on an impersonal level.[13] Gale did not occupy such a sensitive position as would require complete trust and confidence, where personal ill will would preclude his reinstatement. Hence, in *Panday v. NLRC*[14] We ruled that "[i]f the respondent had been a laborer, clerk or other rank-and-file employee, there would be no problem in ordering her reinstatement with facility." Neither is the enmity of such degree as to prevent private respondent's reinstatement.[15]

We do not concur with petitioner that private respondent is not entitled to his share in the service charge. As pointed out by the Court of Appeals, that private respondent was entitled to his share in the service charge collected during the period he was illegally dismissed finds support in the provisions of their collective bargaining agreement. Hence, We will not disturb this factual finding.

Interestingly, however, petitioner alleges that private respondent continued to receive his monthly salary from his dismissal on 4 December 1987 to 15 January 1992, which amounted to a total of P76,598.46, conformably with their agreement "concluded between the Hotel and the Union so that the Union may withdraw its notice of strike from the Department of Labor and Employment and not go on strike,"[16] notwithstanding the fact that shortly after his separation he joined the Armed Forces of the Philippines from which he also received remuneration. This allegation does not only remain unrefuted but is, in fact, implicitly admitted by private respondent in his pleadings filed with respondent court. By his implied admission, private respondent, thus, acknowledges that he received double compensation, which may also explain why the Voluntary Arbitrator, after ordering the former's reinstatement, did not rule on the payment of backwages. The matter of double compensation cannot be countenanced - not because We fault private respondent for not remaining idle during the pendency of his case - but because he should not be allowed to unjustly enrich himself at the expense of petitioner who continues to pay his salary despite his dismissal.

Thus, in *PAL v. PALEA*[17] We concluded that under the principle that no one should be permitted to feather his nest to the disadvantage of another, and proceeding from the law's traditional aversion to double payment, it is neither fair nor just that the reinstated workers who have not rendered any service to the employer, who apparently dismissed them in good faith, should receive relatively sizeable amounts in backwages, and at the same time keep the salary and other monetary benefits they had earned elsewhere during their layoff which they could not have obtained had they remained in the employ of their employer.

In *Itoyon-Suyoc Mines, Inc. v. Sangilo-Itoyon Worker's Union*,[18] We restated these guidelines -

"First. To be deducted from the back wages accruing to each of the laborers to be reinstated is the total amount of earnings obtained by him from other employment(s) from the date of reinstatement. Should the laborer decide that it is preferable not to return to work, the deduction should be made up to the time judgment becomes final. And these, for the reason that employees should not be permitted to enrich themselves at the expense of their employer. Besides, there is the law's abhorrence for double compensation.

"Second. Likewise, in mitigation of the damages that the dismissed respondents are entitled to, account should be taken of whether in the exercise of due diligence respondents might have obtained income from suitable remunerative employment. We are prompted to give out this last reminder because it is really unjust that a discharged employee should, with folded arms, remain inactive in the expectation that a windfall would come to him. A contrary view would breed idleness; it is conducive to lack of initiative on the part of a laborer."

We reiterated the principle against unjust enrichment in *East Asiatic Co., Ltd. v. CIR*[19] -

"In other words, the just and equitable rule regarding the point under discussion is this: It is the obligation of the employer to pay an illegally dismissed employee or worker the whole amount of the salaries or wages, plus all other benefits and bonuses and general increases, to which he would have been normally entitled had he not been dismissed and had not stopped working, but it is the right, on the other hand, of the employer to deduct from the total of these, the amount equivalent to the salaries or wages the employee or worker would have earned in his old employment on the corresponding days that he was actually gainfully employed elsewhere with an equal or higher salary or wage, such that if his salary or wage in his other employment was less, the employer may deduct only what has been actually earned."

Although the principle that no one should be allowed to enrich himself at the expense of another has thus far endured, We have, however, modified the rule. In the course of time We have adopted the policy of fixing the amount of backwages at a just and reasonable level without qualification or deduction so as to free the employees from the burden of proving their earnings during their layoffs and the employer from submitting counter proofs and thus obviate the twin evils of idleness on the part of employees and attrition and delay by the employer in satisfying the award. This practice has been hailed as a realistic, reasonable and mutually beneficial solution. An award of backwages equivalent to three (3) years (where the case is not terminated sooner) serves as the base figure, without qualification or deduction.[20]

This is not to overlook the passage of R.A. 6715, amending among others Art. 279 of the Labor Code, which now provides -

"ART. 279. Security of Tenure. - In cases of regular employment, the employer shall not terminate the services of an employee except for 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" (underscoring supplied).

But as We resolved in *Sealand Service, Inc. v. NLRC*[21] -

"[I]t may be mentioned in passing that the amendatory provision in R.A. 6715, which entitled an employee who in unjustly dismissed from work to his full backwages inclusive of allowance, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of actual reinstatement has no application in the case at bar, said amendment having taken effect on March 21, 1989, after the decision sought to be enforced in the case had become final and executory. We have ruled in *Lantion, et al. v. NLRC, et al.*, that said amendment has no retroactive application."

Perforce, except for *Balasbas v. NLRC*[22], We have refrained from awarding full backwages unless the unlawful dismissal occurred on 21 March 1989 or thereafter.

And while We have continued applying the rule in *New Manila Candy Workers Union (Naconwa-Paflu) v. CIR*[23] in some cases, e.g., *Panday v. NLRC*[24] where five (5) years' backwages were decreed on account of employer's unfair labor practice and evident bad faith, the general rule remains: where the illegal dismissal transpired before the effectivity of R.A. 6715, or before 21 March 1989, the award of backwages in favor of the dismissed employee is limited to three (3) years without deduction or qualification.[25]

In the case before Us, since the illegal dismissal of private respondent occurred on 4 December 1987, or before R.A. 6715 took effect on 21 March 1989, he is entitled only to three (3) years' backwages, inclusive of all allowances and other benefits, without deducting any remunerations he may have received as member of the Armed Forces of the Philippines, or from any other employment, and not to his full wages from the time he was

dismissed up to the present. Certainly, private respondent cannot be allowed to receive salary from petitioner for the whole duration that he was not working as roomboy by reason of his unjust dismissal, while at the same time, draw compensation as member of the Armed Forces of the Philippines which would not have been possible had he continued to work for petitioner; for that would be unjust enrichment. Consequently, if private respondent already received more than what he is entitled to in accordance herewith, he should reimburse petitioner such amount in excess of what is due him; otherwise, petitioner should make good the corresponding deficiency.

WHEREFORE, except as herein above modified, the Decision of 24 October 1991 and the Resolution of 4 December 1991 of respondent Court of Appeals are hereby AFFIRMED. No costs.

SO ORDERED.

Cruz, (Chairman), Padilla, and Griño-Aquino, JJ., concur.
Medialdea, J., on leave.

[1] "Buaka ng ina nila, lahat sila pasipsipan".

[2] Rollo, p. 102.

[3] Fourteenth Division; Decision penned by Associate Justice Jesus M. Elbinias, and concurred in by Associate Justices Gloria C. Paras (Chairman) and Fermin A. Martin, Jr.

[4] Rollo, pp. 28-31.

[5] Ibid., p. 46.

[6] Liberty Flour Mills Employees v. Liberty Flour Mills, Inc., G.R. Nos 58768-70, 29 December 1989, 180 SCRA 668, and the cases cited therein; Eternit Employees and Workers Union v. De Veyra, G.R. No. 50110, 21 September 1990, 189 SCRA 752; Icasiano v. Office of the President, No. L-49855, 15 May 1992.

[7] See Villadolid v. Inciong, G. R. No. 52364, 25 March 1983; 121 SCRA 205, and similar cases.

[8] No. L-34974, 25 July 1974; 58 SCRA 120, 131.

[9] G.R. No. 84688, 20 August 1990; 188 SCRA 748.

[10] G.R. No. 75704, 19 July 1989; 175 SCRA 450.

[11] G.R. No. 80600, 12 March 1990; 183 SCRA 451.

[12] G. R. No. 82511, 3 March 1992; 206 SCRA 701, 712.

[13] See Lucena v. Pan-Trade, G.R. No. 80998, 25 April 1989; 172 SCRA 733, 739.

[14] G.R. No. 67664, 20 May 1992.

[15] See Employees Association of the Philippine American Life Insurance Co. v. NLRC, G.R. No. 82976, 26 July 1991; 199 SCRA 628.

[16] Petition, pp. 8, 16.

[17] 108 Phil. 1129.

[18] No. L-24189, 30 August 1968; 24 SCRA 873, 887.

[19] No. L-29068, 31 August 1971; 40 SCRA 521, 547-548.

[20] As originally proposed by Mr. Justice Claudio Teehankee in his Separate Opinion in Mercury Drug Co., Inc. v. CIR, No. L-23357, 30 April 1974, 56 SCRA 694, 710-711; Mariners Polytechnic School v. Leogardo, G.R. No. 74271, 31 March 1989, 171 SCRA 597, citing Feati University Faculty Club (PAFLU) v. Feati University, No. L-31503, 15 August 1974, 58 SCRA 395; Torillo v. Leogardo, G.R. No. 77205, 27 May 1991, 197 SCRA 471.

[21] G.R. No. 90500, 5 October 1990; 190 SCRA 347, 353-354.

[22] G.R. No. 85286, 24 August 1992.

[23] No. L-29728, 30 October 1978; 86 SCRA 36.

[24] See Note 13.

[25] Icasiano v. Office of the President, See Note 5; Ranara v. NLRC, G.R. No. 100969, 14 August 1992, among other cases.

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