

VALIANT MACHINERY AND METAL CORPORATION AND JIMMY LUA SING, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (FIRST DIVISION), ELENO C. PONCIANO AND FERDINAND TRIA, RESPONDE...

G.R. No. 105877. January 25, 1996

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for certiorari with prayer for preliminary injunction and/or restraining order to annul the decision of the National Labor Relations Commission (First Division) in NLRC NCR CASE No. 000808-90, reversing the decision of the Labor Arbiter and ordering petitioners to reinstate private respondents and pay them backwages equivalent to their salaries for three years.[1]

Private respondents Eleno Ponciano and Ferdinand Tria were machinists at a machine and foundry shop, the Valiant Machinery and Metal Corp., at Grace Park, Kalookan City. Ponciano was employed in January 1987, while Tria was hired on April 4, 1988. At the time of their separation on April 25, 1990, Ponciano was receiving a daily wage of P117.00, while Tria was receiving P95.00.

It appears that on April 18, 1990, the two obtained salary advances ("vale") from petitioner Lua Sing, president and general manager of the machine and foundry shop, and, that the next day, they were absent from work. They reported back for work the following day, April 20 and 21, 1990.

April 22 was a Sunday but, although the next day, April 23, Monday, was not a holiday, private respondents again did not report for work, taking advantage of a company rule that gave workers the option not to work on Mondays when there was no electricity in the area.

When they reported for work on April 24 and on April 25, private respondents claimed that they were not allowed to enter the company premises. On April 26, 1990 they filed complaints for illegal dismissal with the Department of Labor. In a joint affidavit submitted to the Labor Arbiter, they alleged:[2]

4. Without any reason at all and without giving any notice of termination, we were just barred from entering the place of work and were prohibited from working in the morning of April 25, 1990 when we reported for work on that day.

5. Without any hearing or semblance thereof, we were just terminated unlawfully and unceremoniously.

6. After its incorporation, Mr. Lua Sing started to dismiss his employees who were receiving high pay; in fact, some of those who were dismissed were paid their separation pay but there were other (sic) who were not so paid like us.

Petitioners denied the charge. They claimed that private respondents had asked for additional cash advances on April 20 and 21, 1990 but, as their request was denied, they went on an indefinite leave, ignoring petitioners'

pleas not to abandon their work because they were badly needed in the factory. Petitioners claimed that, as a matter of fact, private respondents names were included in the payroll for April 1990.[3]

Private respondents in turn denied that they ever asked for additional salary advances on April 20 and 21, 1990 and that they went on an indefinite leave of absence because their request was denied. They claimed that petitioner Lua Sing's tactic was to force them to resign so that the company would not have to give separation pay.[4] It was charged that when the business was changed from single proprietorship into a corporation, the company laid off some highly-paid employees by giving them separation pay.

On the other hand, petitioners submitted the affidavit of its security guard, Bernardino Busbus, who claimed that Eleno Ponciano and Ferdinand Tria did not report for work during the period from April 23 to 29, 1990 and that they were not prevented from entering the company premises.[5]

The Labor Arbiter rendered a decision dismissing the private respondents complaint.[6] He found that private respondents were badly needed in the factory and it was improbable that they had been fired especially considering that they had been granted increases and cash advances. He gave credence instead to the testimony of the security guard, Bernardino Busbus, that private respondents had not been prevented from returning to work.

The private respondents appealed to the NLRC, which, on December 6, 1991, rendered a decision, reversing the Labor Arbiter's ruling and holding petitioners guilty of illegal dismissal. The NLRC ordered the reinstatement of the two employees to their former positions with full backwages and without loss of seniority rights. In the event reinstatement was not feasible, they were ordered granted separation pay with full backwages for three years, plus 10% of the total award as attorney's fees.[7]

The NLRC found that, as a matter of policy, the company really gave workers the choice not to report for work on Mondays because of power outage in 1990 in the area. It noted the absence of a written application for a leave which, in its opinion, belied petitioners' claim that private respondents had asked to be allowed to go on indefinite leave. It pointed out that the terms and conditions of employment in the company were such as to make it improbable that private respondents would abandon their jobs. The NLRC thought that private respondents had been maneuvered into a position where they had no choice but to resign so that the company could have an excuse for not giving separation pay.

We wish also to point out that there was a change in the company's structure from a single proprietorship to that of a corporation resulting in the dismissal of some workers who were paid their separation pay, however, there are those who were not extended this benefit including complainants. This situation lead as to decipher a scheme wherein management manipulated and placed complainants in a very tight and hairline position where employer-employee relation could be deemed severed or terminated without being held answerable for additional expense in their removal. Complainants appear to have been pushed to the wall, so to speak, thus, in their reply affidavit they asserted that "had we not been aggrieved by the act of management especially Mr. Lua Sing, we would not have filed the case." [8]

The NLRC therefore held the petitioners guilty of constructive dismissal.

Petitioners moved for a reconsideration. On December 6, 1991, the NLRC modified its decision as to the amount of the monetary awards. Still unsatisfied, petitioners brought this petition.

Petitioners allege that the NLRC gravely abused its discretion by:

1. Reversing and setting aside the decision of the Honorable Labor Arbiter and holding that private respondents were illegally dismissed.
2. Ordering the reinstatement of private respondents plus full backwages and/or payment of separation pay plus

full backwages.

3. Awarding attorney's fees considering that there was no factual and legal justification for the amount awarded.

The Court finds substantial evidence in support of the ruling of the NLRC that the private respondents were indeed dismissed without cause. While there was no outright or open termination of the services of the employees, there is reason to believe the company barred them from work because they were absent practically for one week when they were badly needed in the factory. During the week, from Wednesday, April 18 to Tuesday, April 24, 1990, they worked for two days only. That petitioners did not look kindly at this fact is suggested in the following portion of the comment of the Solicitor General:

Nonetheless, it cannot be ignored that private respondents suffered some form of harassment. There is no reason to believe that they did not want to report for work, considering that they were paid on a daily basis. They would not have filed the case for illegal dismissal unless they had some reason therefor. Their assertion that they were barred from working on April 25, 1990 must have some truth. However, the circumstances do not call for private respondents' immediate reinstatement or payment of full backwages.

Private respondents themselves must admit that they had not been ideal employees. It seems that they are fond of absenting themselves without very good reason. The day after they got the first cash advance, they absented themselves. On April 23 and 24, 1990, the days after they were allegedly refused to obtain additional cash advances, they again absented themselves. How can the petitioners expect to recover from private respondents the amounts advanced when the latter had not been faithfully reporting for work? Private respondents could not expect to avail of additional cash advances when they had shown themselves to be unreliable.[9]

Although it is true that the company allowed its workers to be absent on Mondays, when there was no electricity in the area, the fact is that private respondents were also absent without leave on another day so that effectively they worked for only two days within a period of one week. To the company private respondents must have appeared to have abused the company's privilege, considering that they had just been given salary advances.

It may be that, as the Solicitor General contends, private respondents were not without sin, but this must be shown after notice and hearing as required by the Labor Code and its implementing rules.[10] As long as petitioners insist they did not prevent private respondents from returning to work, the question whether they were dismissed for a just and valid cause cannot be determined. Petitioners' claim that private respondents absented themselves because they were refused additional cash advances simply will not wash. Private respondents obtained advances on April 18, 1990.

Assuming that after this private respondents asked for additional amounts and that they did not show up for work the next day because petitioners refused their request, the fact remains that private respondents reported for work the following April 20 and again on April 21. There is thus no basis for the allegation that private respondents went on leave indefinitely because they did not get what they wanted.

It is more probable that, as claimed by private respondents, they tried to report for work on Tuesday, April 24, and on Wednesday, April 25, 1990, but they were not allowed into the company premises. Immediately the following day, April 26, 1990, they filed this case with the Labor Arbiter's Office. They would not have done so if they had not been barred from work. That they were sulking because their request for additional salary advances was refused is improbable, considering that they had been given advances before. That they absented themselves from work out of petulance and later complained of illegal dismissal is thus highly improbable.

When there is no showing of a clear, valid, and legal cause for the termination of employment, the law considers the matter a case of illegal dismissal[11] and the burden is on the employer to prove that the termination was for a

valid or authorized cause.[12] The petitioners are liable for illegal dismissal and not for constructive dismissal, contrary to the findings of the NLRC. A constructive discharge is defined as "a quitting because continued employment is rendered impossible, unreasonable or unlikely; as an offer involving a demotion in rank and a diminution in pay." [13]

Having determined that private respondents were illegally dismissed, the next question is whether the NLRC gravely abused its discretion in ordering the reinstatement of dismissed employees and the payment to them of full backwages or, if reinstatement was no longer feasible, the grant to them of separation pay plus full backwages. This Court has held that illegally dismissed employees are entitled to reinstatement and full backwages. If reinstatement is not possible, the employees are entitled to the grant of separation pay and full backwages.[14] Accordingly, the award of backwages for three years to private respondents should be modified in accordance with Art. 279 of the Labor Code, as amended by R.A. 6715, by giving them full backwages, as the dismissal occurred after March 21, 1989, the date of its effectivity.

The Court, however, agrees with petitioners that the award of attorney's fees is improper and erroneous. While Art. 2208 of the Civil Code allows attorney's fees to be awarded if the claimant is compelled to litigate with third persons or to incur expenses to protect his interest by reason of an unjustified act or omission of the party from whom it is sought,[15] there is no showing in the case at bar that petitioners acted willfully or in bad faith and practically compelled private respondents to litigate and incur litigation expenses. In view of the declared policy of law that awards of attorney's fees are the exception rather than the rule, it is necessary for the NLRC to make express findings of facts and law that would bring the case within the exception and justify the grant of such award. The matter of attorney's fees cannot be touched upon only in the dispositive portion of the decision. The text itself must state the reasons why attorney's fees are being awarded.[16] As the decision of the NLRC in this case states no basis for the award of attorney's fees, such award should be deleted.

WHEREFORE, the petition is DENIED. The decision of the respondent NLRC dated December 6, 1991 and its Resolution dated May 21, 1992 are AFFIRMED with the MODIFICATION that (1) the amount of full backwages that private respondents are entitled to receive shall be subject to the right of the petitioners to prove and deduct whatever income may have been earned by the former in the interim and (2) the award of attorney's fees is deleted.

SO ORDERED.

Regalado (Chairman), Romero, and Puno, JJ., concur.

[1] Rollo, p. 40.

[2] Rollo, p. 63.

[3] Rollo, pp. 48-49.

[4] Rollo, p. 65.

[5] Rollo, p. 66.

[6] Rollo, p. 70.

[7] Per Commissioner Bartolome S. Carale (Chairman) and concurred in by Commissioners Romeo B. Putong and Vicente S.E. Veloso.

[8] Rollo, pp. 33-35.

- [9] Manifestation and Motion in Lieu of Comment, p. 11, Rollo, p. 122.
- [10] § 2-6, Rule XIV, Bk V, Rules & Regulations Implementing the Labor Code as amended; Pepsi-Cola Bottling Co. v. NLRC, 210 SCRA 277(1992).
- [11] General Baptist Bible College v. NLRC, 219 SCRA 549 (1993).
- [12] Gesulgon NLRC, 219 SCRA 561 (1993).
- [13] Gaco v. NLRC, 230 SCRA 260 (1994); People's Security, Inc. v. NLRC, 226 SCRA 146 (1993).
- [14] Radio Communications of the Philippines, Inc. v. NLRC, 210 SCRA 222(1992).
- [15] Solid Homes, Inc. v. CA, 235 SCRA 299 (1994).
- [16] Cf Mirasol v. De la Cruz, 84 SCRA 337 (1988).

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