

BPI CREDIT CORPORATION, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND BENJAMIN JOVELLANOS, RESPONDENTS.

G.R. No. 106027. July 25, 1994

Ponente: PUNO, J.

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PUNO, J.:

The most frequently assaulted right of workers is their right to security of tenure. The Constitution shields this right against unjustified attacks. The petition at bench represents another attempt to negate this constitutional right of workers to security of tenure. It cannot succeed.

The records show that private respondent Benjamin Jovellanos is the Marketing Assistant of petitioner BPI Family Bank, Dagupan City branch. Ricardo Torio worked as Credit Investigator Appraiser in the same bank.

On July 8, 1987, a certain Alex Racimo executed an Affidavit linking Jovellanos and Torio to certain anomalies, viz:

- "(1) That I obtained a loan from the BPI Family Bank, Dagupan City in the amount of P200,000.00;
- (2) That in the processing of my application for this loan I had dealt with RIC TORIO, an old acquaintance;
- (3) That in the beginning when I was still applying for a loan I was made to believe by RIC TORIO that I will not pay any charges except the application fee in the sum of P500.00, which still be refunded to me upon release of my approved loan;
- (4) That when my loan was released the above named person approached me and demanded from me something which they termed it for the boys and he mentioned the name of BEN JOVELLANOS a co-employee at the BPI Credit Corporation, Dagupan City;
- (5) That out of gratitude I was handling to him the sum of P1,000.00 but he ignored it and instead he told me that he ought to charge five (5%) of the total amount of the approved loan, upon release, but considering that we were friends, 2% would be enough;
- (6) That I tried to bargain with him that he accepts the P1,000.00 and just as soon as I sell my property in Dagupan, I will give him the remaining P3,000.00, but he declined and turned his back towards me;
- (7) That I found it very strange because instead of being refunded the amount of P500.00 which I paid as application fee, said person is collecting from me a certain percentage of my approved loan; x x x."

Upon receipt of the affidavit, petitioner confronted respondent Jovellanos on August 12, 1987. According to the petition, Gaspar Antonio de los Santos, AVP of petitioner "xxx brought up the subject as he and Jovellanos were on their way home from a staff presentation at about 9:45 p.m." [1] It is also stated that Santos "xxx confronted Jovellanos about the contents of the affidavit without naming Racimo as its author." [2] Respondent Jovellanos was also instructed to report to the head office of the petitioner on August 17, 1987.

On August 17, 1987, petitioner alleged that de los Santos "once more brought up the matter of the reported irregularities with Jovellanos." [3] On this occasion, according to petitioner, de los Santos "named Racimo and read portions of his (Racimo's) affidavit." [4] Thereafter, de los Santos served the notice of preventive suspension on Jovellanos signed by Socorro Lantin, another AVP of petitioner. [5] The notice reads:

"Please be advised that pending investigation of the reported irregular transactions pertaining to Real Estate Mortgage Loans of which you are CI-Appraiser with the end in view of ascertaining degree of responsibility and/or extent of violation of Bank policies and regulations as well as possible losses to the Bank, you are hereby relieved of your duties and placed under preventive suspension effective immediately.

In the meantime, you are free to submit whatever explanation/statement you may have about the incident or any information that could held in the probe of the reported anomaly."

Respondent Jovellanos denied the charge against him. He said he did not know Racimo.

On August 20, 1987, respondent Jovellanos wrote a letter to Lantin seeking to lift his preventive suspension. Attached to the letter was his Affidavit which reads:

"That I was made aware of the affidavit executed by Alex Racimo of Binalonan, Pangasinan before the Clerk of Court of the Regional Trial Court, Urdaneta, Pangasinan, which contained among others, Alex Racimo's statement.

(a) that Ric Torio asked Alex Racimo some money in return to the approval of his loan with BPI Credit Corporation;

(b) that in asking the money, Ric Torio represented to Alex Racimo that I was the one who instructed Ric Torio to make the demand;

That I never instructed Ric Torio to ask for money from Alex Racimo nor I ever connived with him to ask or demand for money; and in fact and in truth I did not know that Ric Torio asked for money from Alex Racimo;

That if I had known that Ric Torio used my name, I would not have consented to it;

That I have not engaged myself in any irregular or anomalous transaction in relation to my duties and responsibilities as marketing assistant with BPI Credit Corporation."

Likewise attached was the Sworn Clarificatory Statement of Racimo, viz:

"That I previously executed an affidavit before the Clerk of Court, Regional Trial Court, Urdaneta, Pangasinan;

That in said affidavit, I stated that Ric Torio upon the instruction of Ben Jovellanos asked me money in return to the approval of my loan with BPI Credit Corporation;

That in fairness to Ben Jovellanos, I should like to clarify my statement as follows:

(a) That Ben Jovellanos never personally approached me or asked me for money;

(b) That I did not have any basis to tell whether Ben Jovellanos really instructed or convinced (sic) with Ric Torio in asking money; hence Ben Jovellanos might have just been used by Ric Torio in asking money."

Respondent Jovellanos bewailed the failure of petitioner to give the details of the "reported irregular transactions to real estate mortgage loans." [6]

Respondent's preventive suspension was not lifted. Instead, it was extended as petitioner formed a committee [7] to investigate the reported irregularities. According to the petition, the result of the investigation is as follows: [8]

"x x x

"7. The results of the investigation, which were affirmed under oath by the head of the audit/investigating team, revealed the following: On the solicitation of a percentage of the approved loans, the team visited ten (10) clients of BPI Credit other than Mr. Alex Racimo to verify whether the employees were demanding for a percentage of the approved loans. The team was able to talk to seven (7) clients with the following results:

(a) Five (5) clients said that the employees did not ask them for any consideration for the approval of their loans.

(b) Two (2) clients said that they were approached by the employees for certain considerations. They were, however, hesitant to give their written statements, probably afraid that the employees would avenge them. One of them, Imelda' Ico, said that Torio and Jovellanos asked her for a "blow out" on two separate occasions; the first was when she filed her loan application, and later, when her loan was approved. She, thus, tendered two "blow outs" which Torio and Jovellanos, together with ten to thirteen of their friends attended. The client also informed the team that before she applied for a loan at BPI Credit, she was forewarned by her friends of certain employees who reportedly demand a percentage of the approved loan. The other, Angelita Reminguer, said that Jovellanos asked for five percent of the approved loan (P800,000.00) while the second release of her construction loan was being processed. She complained to SAM PS Coquia of BPI Dagupan Branch who advised her not to give in to the demand. SAM PS Coquia relayed the client's complaint to the Manager of the Dagupan Branch and the Business Center Head.

8. With respect to the overvaluation of properties, twelve (12) properties previously appraised by Torio were re-appraised by the appraiser of BPI Dagupan Business Center. Torio's appraisal of two of these properties varied considerably from the figures reached when these were re-appraised. The first property which was owned by Pedro/Victoria Revote and subject of a real estate mortgage as security for a P100,000.00 loan, was appraised by Torio on 3 July 1986 as follows:

Land: 287 sq.m. @ 400/sq.m. P 114,800.00

Bungalow: 130.35 sq.m. @ 2,300/ sq.m. 299,000.00

Total: Appraised Value P 413,800.00

Torio did not subject the property to depreciation since the "Estimated Remaining Economic Life based on Present Physical condition" equaled the "Normal Economic Life for Type of Building." The bungalow, moreover, was reported to be well-maintained.

9. On the other hand, Jorge Monje, Appraiser of BPI Dagupan Branch submitted a markedly different appraisal of the property on 4 September 1987. He depreciated the bungalow based on the estimated remaining life of seven years:

Land: 287 sq.m. @ 400/sq.m. P114,800.00

Improvement:

10.35 sq.m. @

2,300/sq.m. 299,806.00

Less: 72% depreciation

(based on estimated

remaining life of

7 years) 215,859.00 83,946.00

Total Appraised Value P198,746.00

Monje also found that the improvement, which was built in 1969, was not properly maintained. Mr. John Cornel, an appraiser of Dagupan Business Center who accompanied Monje during the inspection, appraised the property at P222,729.00. The difference of P23,983.00 from the appraisal of Jorge Monje was due to the lower depreciation rate adopted by Cornel. Compared to the appraisals made by Monje and Cornel, Torio appraised the property at twice its value. Moreover, the fact that the property was foreclosed by the Rural Bank of Malsiqui on 17 September 1984 and redeemed by the borrowers on 1 October 1984, was not reflected on the Loan Offering Memo addressed to the Credit Committee. This Loan Offering Memo was signed by Marketing Assistant Benjamin Jovellanos. That he signed the same was never denied by him. He likewise never bothered to explain why he, knowing that the collateral had a history of foreclosure and defaults, omitted mentioning this important fact in the Loan Offering Memo."

Respondent Jovellanos was then served a Notice of Termination effective November 25, 1987 on the ground of wilfull breach of trust. Jovellanos countered by filing a complaint for illegal dismissal with damages. On September 5, 1990, the Labor Arbiter ruled in favor of respondent Jovellanos, thus:

"Wherefore, consistent with the foregoing tenor, judgment is hereby rendered, to wit:

1. As to complainant Benjamin Jovellanos, respondent is guilty of illegal dismissal, accordingly, respondent BPI Credit Corporation is ordered, as follows:

- (a) To reinstate immediately complainant Benjamin Jovellanos to his former position or equivalent thereto without loss of seniority rights or at the option of respondent BPI CREDIT CORPORATION, payroll reinstatement;
- (b) To pay complainant Benjamin Jovellanos two (2) years backwages without qualification or deduction in the amount of SEVENTY SIX THOUSAND AND EIGHT HUNDRED PESOS (P76,800.00); and
- (c) To pay attorney's fees ten percent (10%) of the judgment award in the amount of P7,680.00."

Petitioner appealed to the respondent NLRC. On December 20, 1991, the Third Division of the respondent NLRC, affirmed the ruling of the Labor Arbiter except that it deleted the award of attorney's fees in favor of respondent Jovellanos.[9] Petitioner's motion for reconsideration was denied by the respondent commission on April 30, 1992.[10]

In this petition for certiorari, petitioner urges:

ARGUMENTS

I

THE HONORABLE COMMISSION COMMITTED A GRAVE ABUSE DISCRETION IN FINDING THAT THERE WAS NO JUST CAUSE FOR THE DISMISSAL OF PRIVATE RESPONDENT.

II

THE HONORABLE COMMISSION COMMITTED A GROSS MISAPPRECIATION OF THE ATTENDANT FACTS AND OF THE APPLICABLE LAW IN FINDING THAT PETITIONER DID NOT OBSERVE DUE PROCESS BEFORE TERMINATING PRIVATE RESPONDENT'S SERVICES.

We find no merit in the petition.

Petitioner's submissions ignore the protection accorded by our Constitution to the worker's precious right to security of tenure. The enthronement of the worker's right to security of tenure in our fundamental law was not achieved overnight. For all its liberality towards labor, our 1935 Constitution did not elevate the right as a constitutional right. For a long time, the worker's security of tenure had only the protective mantle of statutes and their interpretative rules and regulations. It was an uncertain protection that sometimes yielded to the political permutations of the times. It took labor nearly four decades of sweat and tears to persuade our people thru their leaders, to exalt the worker's right to security of tenure as a sacrosanct constitutional right. It was Article II, section 2 of our 1973 Constitution that declared as a policy that the State shall assure the right of workers to security of tenure. The 1987 Constitution is even more solicitous of the welfare of labor. Section 3 of its Article XIII mandates that the State shall afford full protection to labor and declares that all workers shall be entitled to security of tenure. Among the enunciated State policies are the promotion of social justice[11] and a just and dynamic social order.[12] In contrast, the prerogative of management to dismiss a worker, as an aspect of property right, has never been endowed with a constitutional status.

The unequivocal constitutional declaration that all workers shall be entitled to security of tenure spurred our lawmakers to strengthen the protective walls around this hard earned right. The right was protected from undue infringement both by our substantive and procedural laws. Thus, the causes for dismissing employees were more defined and restricted;[13] on the other hand, the procedure of termination was also more clearly delineated.[14] These substantive and procedural laws must be strictly complied with before a worker can be dismissed from his employment.

Prescinding from these premises, we affirm the ruling of the NLRC that private respondent was dismissed in violation of his right to procedural due process. Article 277(b) of the Labor Code provides the procedure for terminating a worker, viz:

x x x

"(b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer. The Secretary of the Department of Labor and Employment may suspend the effects of the termination pending resolution of the dispute in the event of a prima facie finding by the appropriate official of the Department of Labor and Employment before whom such dispute is pending that the termination may cause a serious labor dispute or is in implementation of a mass lay--off."

In the case at bench, petitioner did not give fair notice to private respondent of the charges against him. According to the petitioner, on August 12, 1987, its Assistant Vice President de los Santos "x x x brought up the subject as he and Jovellanos were on their way home from a staff presentation at about 9:45 p.m." He also "x x x confronted Jovellanos about the contents of the affidavit without naming Racimo as its author." Such casualness and incompleteness of information cannot satisfy the requirements of due process. Neither could the notice of preventive suspension served on private respondent on August 17, 1987 have any curative effect. A reading of said notice will show that it required private respondent to explain his participation in certain "... reported irregular transactions pertaining to Real Estate Mortgage Loans of which you are CI-Appraiser..." The lack of

specificity or the generality of the charge speaks for itself. Worse still, petitioner thereafter conducted its own ex parte investigation without the participation of the private respondent. It interviewed a certain Imelda Ico who revealed that Jovellanos and Torio asked her for a "blow out" when she filed her loan application, and later when her loan was approved. Another woman, Angelita Reminguer, also declared that Jovellanos asked for five percent (5%) of her approved loan. The two, however, refused to give any sworn statement. Private respondent who was not aware of the investigation was never given an opportunity to disprove their accusation. Yet, primarily on the basis of the damaging statements of Ico and Reminguer, petitioner dismissed private respondent effective November 25, 1987 on the ground of willful breach of trust. The opportunity of private respondent to defend himself was thus more chimerical than real.

We also affirm the ruling of the NLRC that the evidence on record does not justify the dismissal of the private respondent. Alex Racimo retracted his affidavit implicating private respondent. The charges made by Imelda Ico and Angelita Reminguer hardly had any evidentiary value. As ruled by the Labor Arbiter and the NLRC:

"As gleaned from the record, other charges made against complainant Jovellanos accusing him of soliciting percentage fee by a certain Angelita Reminguer and Imelda Ico could not also be given credit. Firstly, because it is an unsworn statement; Secondly, being mere allegation unsupportive (sic) by corroborative evidence; Thirdly, complainant Jovellanos was not aware of such accusation during his confrontation with the assistant Vice-President of BPI Credit, Gaspar Centino de los Santos. Neither was it specified in his suspension order leading to his termination. It is pertinent further, to note the fact that the foreclosure and redemption of a real property not having been reflected on the loan offering memo addressed to the Credit Committee could have been done intentionally by complainant Jovellanos. For such omission, We believe that complainant could not be solely responsible, since the memo was also signed by the Business Center Head Francisco Nery and Assistant Vice-President Bienvenido Manangun who are higher in rank than complainant Jovellanos being merely marketing assistant. This omission therefore, should not be taken against him and charge of cooperating or lending assistance to the Credit Investigator in the overvaluation of the appraisal of the property of a client of the Bank."

All these notwithstanding, petitioner insists that on ground of loss of trust and confidence it can dismiss private respondent considering the nature of his position as Marketing Assistant. It posits the thesis that the dismissal can be justified as long as it has "some basis" since the position of private respondent calls for trust. Time does not stand still and petitioner ought to know that this thesis has long been entombed by our Constitution which has elevated the security of tenure of our workers to a constitutional right. We hold that this right cannot be eroded, let alone be forfeited except upon a clear and convincing showing of a just and lawful cause. In the case at bench, it is not disputed that private respondent has served the petitioner from April 23, 1976 up to September 18, 1987 starting as credit investigator until he rose to the position of Marketing Assistant. His eleven (11) years of service with the petitioner has not been tainted with any kind of dishonesty. We cannot allow petitioner to disregard this long length of faithful service on the basis of evidence that is hearsay, uncorroborated, and untrustworthy, otherwise, the tenurial right of our workers would have but a scrap value.

IN VIEW WHEREOF, the petition is DISMISSED, there being no showing of grave abuse of discretion committed by the public respondent in its Decision of December 20, 1991. Costs against petitioner.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, and Mendoza, JJ., concur.
Padilla, J., no part.

[1] Page 5, Rollo.

[2] Id.

[3] Id.

[4] Id.

[5] Id.

[6] Decision of public respondent, p. 7; p. 36, Rollo.

[7] It was composed of Arthur D. Yosinco, Senior Asst. Manager; Arturo L. Kimseng, Asst. Vice President and Internal Auditor; and Eliseo O. Adre, Vice President and Internal Auditor.

[8] Pages 8-11, Rollo.

[9] Annex "A", Petition.

[10] Annex "B", Petition.

[11] Section 10, Article II.

[12] Section 9, Article II.

[13] Articles 279 and 282 of the Labor Code.

[14] Article 277 of the Labor Code.

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