NORKIS DISTRIBUTORS, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND NEMESIO T. IGNACIO, JR., RESPONDENTS.

G.R. No. 112230. July 17, 1995

Ponente: QUIASON, J.

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QUIASON, J.:

This is a petition for certiorari under Rule 65 of the Revised Rules of Court to set aside the Resolutions dated April 20, 1993 and August 26, 1993 of the National Labor Relations Commission (NLRC) in Case No. RAB-11-08-50299-91.

I

Private respondent was employed by petitioner on May 1, 1986. He was promoted to the position of Credit Sales Representative IV on April 16, 1991. However, on June 30, 1991, he was informed of the termination of his services in a letter which stated "xxx that because of the dwindling collection in your area coupled with the adverse business condition now prevailing and affecting the company, your services will cease at the close of office hours of June 30, 1991" (Rollo, p. 49). The letter also stated that in the event petitioner could recover from its losses and private respondent's services may be needed, his reemployment would be given priority.

Private respondent did not accept the separation pay offered him and instead filed a complaint for illegal dismissal, nonpayment of salaries, overtime pay, premium pay for holiday and rest days, damages and attorney's fees. In his decision, the Labor Arbiter found the dismissal illegal. He decreed:

> "WHEREFORE, judgment is hereby rendered:
>
> "1. Declaring respondent guilty of illegal dismissal;
>
> "2. Ordering respondent to reinstate complainant to his former position without loss of seniority rights and privileges immediately upon receipt;
>
> "3. Ordering respondent to pay complainant his full back wages and allowances from the time he was [illegally] terminated on July 19, 1991 up to this promulgation, in the amount of P42,446.50;
>
> "4. Ordering respondent to pay complainant's accrued salary in the amount of P3,691.00;
>
> "5. Ordering respondent to pay complainant's accrued bonus in the amount of P16,100.00;
>
> "6. Ordering respondent to pay complainant moral and exemplary damages in the amount of P20,000.00 and P10,000.00 respectively;
>
> "7. Ordering respondent to pay complainant 10% at (sic) the total award as attorney's fee."
>
> TOTAL AWARD P101,461.25

(Rollo, pp. 47-48).

Petitioner appealed said decision to NLRC.

The NLRC sustained the findings of the Labor Arbiter with the modification as to the award of moral and exemplary damages, which were deleted altogether. Instead of reinstatement and payment of back wages, NLRC awarded separation pay at the rate of one month pay for every year of service.

Petitioner's motion for reconsideration was denied for lack of merit.

II

Petitioner claims that NLRC committed grave abuse of discretion in affirming the findings of illegal dismissal of the Labor Arbiter.

The Labor Arbiter found the evidence on the retrenchment "incomplete and unsatisfactory xxx."

"Aside from the allegation of business reverses, no iota of evidence was ever presented to substantiate the same. Nowhere in the records could you find any financial statement of the respondent company to show, that they are suffering from business reverses to justify their alleged retrenchment program" (Rollo, p. 46).

Likewise, he found that the procedure for retrenchment was not complied with, saying: "There is no showing that the required one month advance notice in writing was served to complainant and the Department of Labor and Employment" (Rollo, p. 46).

The NLRC agreed with the Labor Arbiter that there was no evidence presented by petitioner to establish a retrenchment program of the company (Rollo, p. 32).

The evidence even showed that the branch manager of private respondent requested the assignment of another credit sales representative to support his area and such a representative was in fact assigned (Annex "B" and "C").

As held in Philippine School of Business Administration (PSBA Manila) v. National Labor Relations Commission, 223 SCRA 305 (1993):

> "Petitioner should be mindful that business losses, as a just cause for retrenchment, must be proved, for they can be feigned. In retrenching employees, employers are called upon to analyze the implications of their decision so as not to jeopardize the livelihood of their employees " (At p. 309; underscoring supplied).

Petitioner claims, however, that private respondent was dismissed not only on the ground of retrenchment but also because of inefficiency and loss of trust and confidence. NLRC said that the letter of termination dated June 26, 1991 sent by petitioner only mentioned retrenchment as the ground for termination.

Furthermore, the evidence shows that private respondent received several promotions since his employment in 1986 (Annexes "G" to "V", Position Paper of Private Respondent). He was given bonuses for his collection efforts and a compensation adjustment for his excellent performance (Annex "A", Position Paper of Private Respondent). All these negate petitioner's claim that it had lost trust and confidence in private respondent.

In Imperial Textile Mills, Inc. v. National Labor Relations Commission, 217 SCRA 237 (1993), this Court emphasized:

> "Although loss of confidence is a valid cause to terminate an employee, it must nonetheless rest on an actual breach of duty committed by the employee and not on the employer's caprices. The burden of proof rests upon the employer to establish that the dismissal is for cause in view of the security of tenure that employees enjoy under the Constitution and the Labor Code. The failure of the employer to do so would mean that the dismissal

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> is not justified. xxx (at pp. 244--245; underscoring supplied).

The other awards granted by the Labor Arbiter and affirmed by NLRC, such as the amount of back wages and allowances, accrued salary, accrued bonus and attorney's fee due private respondent, involve the determination of factual issues that is best left to NLRC (Wyeth-Suaco Laboratories, Inc. v. National Labor Relations Commission, 219 SCRA 356 [1993]).

While sustaining the findings of the Labor Arbiter that petitioner illegally dismissed private respondent, NLRC merely ordered the payment of separation pay to private respondent instead of ordering his reinstatement. Much as we would like to inquire into the validity of this order of NLRC, we refrain from doing so because private respondent seemed satisfied with such a remedy and did not question it.

WHEREFORE, the petition for certiorari is DISMISSED.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Bellosillo, and Kapunan, JJ., concur.

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