

PANTRANCO NORTH EXPRESS, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (NLRC), FIRST DIVISION AND REYNALDO M. RUEDA, RESPONDENTS.

G.R. No. 114333. January 24, 1996

Ponente: PUNO, J.

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PUNO, J.:

The present petition for certiorari assails the Decision[1] dated November 29, 1993, rendered by public respondent National Labor Relations Commission (NLRC) in NLRC NCR CA No. 002166-91, which reversed the decision of the labor arbiter.

The facts show that on May 14, 1956, private respondent Reynaldo Rueda was employed as a bus conductor by petitioner and later promoted to the position of Line Inspector-I.

Several years later, petitioner suffered financial setbacks and retrenched some of its employees. Rueda was among those retrenched on September 16, 1978. He received separation pay in the amount of nine thousand pesos (P9,000.00).

On February 9, 1981, Rueda was re-hired as a line inspector by petitioner. He again became a permanent (regular) line inspector after the probationary period of six (6) months.

On June 29, 1987, Rueda got involved in a quarrel with a co-employee. He stabbed bus driver Bonifacio Bartolome. Criminal and administrative complaints were filed against him. The criminal complaint for 'Frustrated Homicide' filed in the Quezon City Regional Trial Court was amicably settled by Rueda and Bartolome. Petitioner, however, through its legal department, proceeded with its own investigation. Rueda claimed he stabbed Bartolome in self-defense.[2]

In a Memorandum[3] dated March 28, 1988, petitioner's legal department, through Atty. Antonio Pekas, recommended to the Personnel Department the dismissal of Rueda.

Rueda requested for a reinvestigation of his case. He alleged that the case between him and Bartolome had already been settled amicably. He also argued that he was not investigated by Atty. Pekas who recommended his dismissal.[4] His request was denied.[5]

On May 4, 1988, Rueda met a vehicular accident. He suffered back injuries and went on sick leave from May 5, 1988 to August 9, 1989. Even before the accident, Rueda has been diagnosed to be suffering from moderately advanced stage of tuberculosis.

It appears that petitioner desisted from dismissing Rueda for stabbing Bartolome. Instead, it approved his retirement "due to medical reasons." Rueda was advised to report to the Personnel Department for the processing of his clearances and the payment of his retirement benefits.[6]

Again, Rueda appealed to petitioner not to retire him from the service.[7] His request was denied in a letter, dated

July 1, 1988.[8] He also learned that his retirement benefits would be computed from the date of his reemployment on February 9, 1981. He pleaded that his service with petitioner be computed continuously from the original date of his employment on May 14, 1956, up to the last day of his sick leave on August 9, 1989. Petitioner rejected his plea.

On October 29, 1990, Rueda commenced an action for "illegal dismissal, reinstatement, backwages, damages and attorney's fees" against petitioner.[9]

In a Decision dated June 28, 1991, Labor Arbiter Pablo C. Espiritu, Jr., dismissed the complaint for lack of merit. The dispositive portion of the decision reads:

"WHEREFORE, premises considered, judgment is hereby rendered: dismissing the complaint for illegal dismissal and damages for lack of merit, however, in the interest of compassionate justice and for humanitarian considerations as manifested by respondent company, respondent is hereby ordered to pay complainant the amount of P36,498.78 as retirement pay based on respondent company's policy of 35 days for every year of service from February 9, 1981 to August 9, 1989, a fraction of at least six (6) months to be considered one (1) year.

"SO ORDERED."

Rueda appealed to public respondent National Labor Relations Commission (NLRC).[10] The decision of the labor arbiter was reversed by public respondent. Public respondent held that Rueda should not be dismissed since, according to his "Salaysay," he stabbed his co-employee in self-defense. However, in lieu of reinstatement, it ordered, inter alia, the payment of Rueda's separation pay computed from his original employment on May 14, 1956, up to July 1, 1988, the date of his alleged constructive dismissal. The dispositive portion of its Decision,[11] dated November 29, 1993, provides:

"WHEREFORE, the appealed Decision is hereby SET ASIDE and a new one entered ordering respondent to pay complainant the total amount of - P286,449.37 broken down as follows:

"1. Backwages for three (3) years

P135,567.12

"2. Separation pay computed at 35 days for every year of service (32 years less 2 years gap) per company policy

P124,841.40

"3. Attorney's fees equivalent to 10% of the total amount awarded

P 26,040.85

"GRAND TOTAL

P286,449.37

"SO ORDERED."

Hence, the petition.

The first issue in the case at bar is whether Rueda's dismissal was illegal.

Article 282 of the Labor Code includes serious misconduct as among the just causes of termination of

employment by an employer, viz:

"(1) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(2) Gross and habitual neglect by the employee of his duties;

(3) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(4) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(5) Other causes analogous to the foregoing."

The Labor Code^[12] also considers illness and retrenchment to prevent losses as valid grounds for termination of employment, subject to the conditions specified therein.

Petitioner anchors its right to terminate the employment of Rueda on the ground of serious misconduct.

In its Comment,^[13] the Office of the Solicitor General (OSG) contends that petitioner cannot capitalize on Rueda's alleged serious misconduct in stabbing his co-employee since his forced retirement was premised on his health problems.

We agree with the Solicitor General. The facts show that petitioner abandoned serious misconduct as a ground to dismiss Rueda when it opted to retire him due to illness. A memorandum to this effect was issued by petitioner on May 10, 1988, thus:

"Memorandum for -

ATTY. MANUEL VIJUNCO

Chairman - Management Committee

Thru: MR. ANGELITO D. YNIGUEZ

General Manager

Subject: REYNALDO RUEDA

Mr. Reynaldo Rueda was recommended for dismissal by our Legal Department for inflicting bodily injury to one of our drivers, Mr. Bartolome. The Management Committee however, reconsidered his case and approved his retirement instead.

Mr. Rueda was rehired on February 9, 1981, and is only 52 years old. Per provisions of the existing CBA, he is not qualified to retirement (sic). However, Mr. Rueda has a history of PTB. His latest X-ray taken on January 1988 showed that he is still afflicted with the disease. Based on his physical condition we can, therefore, consider his retirement due to medical reasons.

(sgd.) RODRIGO R. SAN PEDRO

Head; Personnel Department"

Dismissal is the ultimate penalty that can be meted to an employee. It must, therefore, be based on a clear and not on an ambiguous or ambivalent ground. Any ambiguity or ambivalence on the ground relied upon by an employer in terminating the services of an employee denies the latter his full right to contest its legality. Fairness cannot countenance such ambiguity or ambivalence.

We cannot uphold Rueda's dismissal on the ground of serious misconduct.

Neither can we affirm the legality of Rueda's retirement due to illness. The Rules and Regulations Implementing the Labor Code,[14] provide:

Sec. 8. Disease as a ground for dismissal. - Where the employee suffers from a disease and his continued employment is prohibited by law or prejudicial to his health or to the health of his co-employees, the employer shall not terminate his employment unless there is a certification by a competent public health authority that the disease is of such nature or at such a stage that it cannot be cured within a period of six (6) months even with proper medical treatment. If the disease or ailment can be cured within the period, the employer shall not terminate the employee but shall ask the latter to take a leave. The employer shall reinstate such employee to his former position immediately upon the restoration of his normal health." (Italics supplied)

In this case, petitioner did not submit the required certification by a competent public health authority to show that Rueda's illness could not be cured within the period specified under the aforequoted rule. The radiograph report submitted by petitioner merely stated Rueda's disease. In the absence of such certification, Rueda's retirement due to illness has no leg to stand on.[15]

We now come to the consequences that should visit the petitioner for illegally dismissing Rueda. Under the Labor Code,[16] an illegally dismissed employee is entitled to reinstatement and to backwages. In this case, however, public respondent deemed it proper to order the payment of Rueda's backwages and separation pay, in lieu of reinstatement. Public respondent noted that petitioner is "in severe financial strait, nay, on the verge of collapse," thus, making Rueda's reinstatement impractical or impossible. We find no cogent reason to set aside public respondent's findings on this matter. Be that as it may, we cannot sustain the ruling of public respondent in the computation of Rueda's separation pay, thus:

xxx xxx xxx

"We do not agree with the Labor Arbiter's observation that prescription had set in with regard to complainant's claim for computation of separation pay, i.e., from the time he was originally hired on May 14, 1956 and not from his rehiring on February 9, 1981, after he was retrenched on September 16, 1978. The issue does not involve merely the prescription of separation pay differentials but the legality of his retrenchment and the continuity of his employment status for purposes of computing separation pay. We note that despite complainant's claim that his retrenchment in 1978 was not for a valid cause, respondent did not offer any explanation therefor, much less for the meager retrenchment pay that was given to complainant. In order to give protection to labor, we deem the complainant to have been merely on leave without pay during the two and a half years that he was out of work until he was rehired. This gap should, however, be deducted from his total years of service which is hereby computed from the time he was hired on May 14, 1956 up to July 1, 1988 when he was constructively dismissed. The amount of P9,000.00 which he received supposedly as retrenchment benefit in 1978 should be deducted from said entitlement."

We hold that public respondent gravely abused its discretion in reckoning the employment of Rueda from May 14, 1956, for the purpose of computing his separation pay. It completely disregarded the fact that Rueda did not question his retrenchment in 1978, as indeed, he received his separation pay without protest. Even assuming, arguendo, that Rueda's retrenchment was unjustified, it is now too late to raise it as an issue on the ground of prescription. Rueda should have protested his retrenchment within four (4) years pursuant to Art. 1146 of the Civil Code.[17] As correctly ruled by the labor arbiter, Rueda's length of service with petitioner should be reckoned from February 7, 1981, the date he was rehired, until August 9, 1989 which was the last day of his sick leave of absence.

WHEREFORE, the assailed decision of the National Labor Relations Commission, in NLRC-NCR Case No.

002166-91, is AFFIRMED with the modification that, petitioner is ordered to pay Rueda's separation pay at the rate provided for in Article 284 of the Labor Code, as amended, with his length of service to be computed from the date he was rehired in 1981 until the expiration of his sick leave in August 1989. No costs.

SO ORDERED.

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

[1] Penned by Commissioner Vicente S.E. Veloso and concurred in by Presiding Commissioner Bartolome S. Carale and Commissioner Alberto R. Quimpo.

[2] Annex "C" and "C-1" of Petition; Rollo, pp. 51-52.

[3] Annex "D" of Petition; Rollo, p. 53.

[4] Letter dated April 11, 1988, Annex "E" of Petition; Rollo, p. 54.

[5] Annex "F" of Petition; Rollo, p. 55.

[6] Annexes "G" and "H" of Petition; Rollo, pp. 56-57.

[7] Annex "I" of Petition; Rollo, p. 59.

[8] Letter dated July 1, 1988, marked as Annex "K" of Petition; Rollo, p. 61.

[9] Docketed as NLRC-NCR-00- 10-05789-90.

[10] Docketed as NLRC NCR CA No. 002166-91.

[11] Rollo, pp. 113-123.

[12] Articles 283 and 284 of the Labor Code.

[13] Rollo, p. 154.

[14] Section 8, Rule 1, Book VI.

[15] General Textile, Inc. vs. NLRC, G.R. No. 102969, April 4, 1995, 243 SCRA 233; Cebu Royal Plant vs. Deputy Minister of Labor No. L-58639, August 12, 1987, 153 SCRA 38, 43-44.

[16] Article 279 of Book VI.

[17] Pepsi Cola Bottling Company of the Phils. v. Guanzon, 172 SCRA 571, G.R. No. 81162, April 19, 1989; New Imus Lumber v. NLRC, G.R. No. 83631, April 30, 1993, 221 SCRA 589.

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