

**SAMAR II ELECTRIC COOPERATIVE INCORPORATED, REPRESENTED
BY PONCIANO R. ROSALES, GENERAL MANAGER, PETITIONER, VS.
THE NATIONAL LABOR RELATIONS COMMISSION AND FROILAN
RAQUIZA, RES...**

G.R. No. 116692. March 21, 1997

Ponente: ROMERO, J.

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ROMERO, J.:

This petition for certiorari with prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order seeks the annulment of the March 10, 1994, decision of the National Labor Relations Commission in NLRC Case No. V-0307-92, as well as its order dated April 28, 1994, denying petitioner's motion for reconsideration for lack of merit. The antecedent facts follow.

Private respondent Froilan V. Raquiza was employed by petitioner Samar II Electric Cooperative, Inc. (SAMELCO II) as probationary power plant operator on January 1, 1976, and became a regular employee on July 1, 1976. On February 9, 1980, he was appointed as switchboard operator and sometimes alternated as acting plant superintendent.

Raquiza's problems began when a major breakdown of the diesel engine causing electric failure to the whole franchise area for a period of four months occurred during his shift on January 21, 1988. On January 22, 1988, he was immediately asked to explain the incident, which he did the following day. After investigation, however, SAMELCO II General Manager Ponciano Rosales found Raquiza and his two companions in the shift, Manuel Balasbas and Pascual Martinez, guilty of gross negligence in the performance of their duty. The three were placed under preventive suspension from January 27, 1988, until their termination on February 29, 1988. Nine months later, or on December 5, 1988, Raquiza filed a complaint against petitioner for illegal dismissal, praying for reinstatement and payment of unpaid wages, unpaid overtime pay, attorney's fees, moral and exemplary damages, and the cost of suit.

Labor Arbiter Gabino A. Velasquez, Jr. rendered a decision on September 25, 1992, finding Raquiza's dismissal to be based on a just cause. On appeal, however, the NLRC reversed and set aside his ruling, and ruled as follows:

"WHEREFORE, in view of all the foregoing, the decision appealed from is hereby reversed and set aside, and a new one entered to wit:

- 1) declaring the dismissal of the complainant-appellant (Raquiza) due to gross negligence as illegal;
- 2) ordering respondents (herein petitioners) to reinstate the complainant-appellant to his former position with full backwages not exceeding three (3) years, without loss of seniority rights and other privileges, or in the event reinstatement is no longer feasible due to the realities of the situation, to pay him his separation pay equivalent to one (1) month for every year of service from January 1, 1976 up to and including the three (3) years imputed service for which backwages was awarded;

3) ordering respondents further to pay attorney's fees of 10% of the total monetary award.

All other claims are hereby dismissed for lack of sufficient basis.

SO ORDERED."

Its motion for reconsideration having likewise failed, petitioner filed the instant petition.

Petitioner's present action is premised solely on the grave abuse of discretion allegedly exercised by the NLRC in reversing the labor arbiter's decision. Its arguments, however, fail to persuade this Court, and a closer examination of the questioned judgment would reveal that the NLRC disposed of the case judiciously.

Labor Arbiter Velasquez opined that since Raquiza was not able to specifically deny the charges against him, he should be deemed to have admitted them. Technical rules of evidence are not, however, strictly followed in labor cases. The Labor Code itself affirms this liberality, viz.:

"Article 221. Technical Rules not binding and prior resort to amicable settlement. — In any proceeding before the Commission or any of the Labor Arbiters, the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Code that the Commission and its members and the Labor Arbiters shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process. x x x"[1]

This rule is reiterated in the Rules of Procedure of the NLRC, to wit:

"Rule V.

Section 7. Nature of Proceedings. — The proceedings before a Labor Arbiter shall be non-litigious in nature. Subject to the requirements of due process, the technicalities of law and procedure and the rules obtaining in the courts of law shall not strictly apply thereto. The Labor Arbiter may avail himself of all reasonable means to ascertain the facts of the controversy speedily, including ocular inspection and examination of well-informed Persons.

xxx xxx xxx

Rule VII.

Section 10. Technical rules not binding. — The rules of procedure and evidence prevailing in courts of law and equity shall not be controlling and the Commission shall use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process.

xxx xxx xxx

Raquiza's failure to specifically deny or explain the charges against him should not, therefore, be deemed fatal to his claim.

Our laws as well as this Court have consistently recognized and respected an employer's right to terminate the services of an employee for just or authorized causes. This prerogative, however, must be exercised in good faith. As we held in *Mercury Drug Corp. v. NLRC. et al.*: [2]

"Management also has its own rights, which, as such, are entitled to respect and enforcement in the interest of simple fair play. Out of its concern for those with less privileges in life, the Supreme Court has inclined more often than not toward the worker and upheld his cause in his conflicts with the employer. Such favoritism, however, has not blinded the Court to rule that justice is in every case for the deserving, to be dispensed in the light of the established facts and applicable law and doctrine." [3]

Petitioner as employer is duty-bound to establish the existence of a clear, valid and just ground for dismissing Raquiza. It cannot merely allege that its employee was grossly negligent in the performance of his duty thereby causing great damage to its property and resulting in great pecuniary loss.

Raquiza's dismissal was based on three factors, namely, (a) leaving his work assignment while on duty; (b) not properly checking the engine before starting it; and (c) authorizing the continued running of pielstick (engine) no. 2 in spite of the discovery that there was an oil leakage.

In the case of *Citibank, N.A. v. Gatchalian*,^[4] we ruled that "(g)ross negligence implies a want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them."

While it is true that Raquiza left his place of work to go to the administration building to get the proceeds of his loan during the testing period of the engine, such act cannot be perceived to be so serious as would amount to gross negligence. As to the claim that he did not check the engine, the NLRC found that he actually made several inspections of the engine before actually starting it. We find no reason to disturb this finding in view of the respect and finality which this Court has constantly accorded to factual findings of quasi-judicial agencies such as the NLRC.^[5] Finally, the fact that Raquiza failed to prevent the occurrence of the incident does not sufficiently show nor can it be inferred that he was grossly negligent. At most, it can be considered an error of judgment on his part when he continued to operate the engine. It must be remembered that the purpose of the operation of said engine was to synchronize it with the National Power Corporation's Geothermal Plant in Tongonan, Leyte to augment power during the peak hours in the early evenings.^[6] Stoppage of the operation would have defeated such purpose and violated the very franchise to petitioner.

The investigation conducted by petitioner revealed that "the breakdown was due to the serious error committed by Froilan V. Raquiza, Manuel Balasbas, and Pascual Martinez, although complainant's command responsibility, liability and negligence, x x x, was most serious and the gravest."^[7] Yet, despite this collective error, only Raquiza was dismissed; the other two were merely suspended. Such discrimination cannot be sanctioned by this Court.

Furthermore, the NLRC correctly pointed out from the evidence that there was no clarity or confirmation as to the cause of the pielstick engine breakdown. Thus, it stated:

"More significantly, the findings of the consultant who inspected (p)ielstick Engine No. 2 at the instance of the respondents cost (sic) a serious doubt on the alleged negligence of the complainant-appellant as the proximate cause for the damage of the said engine. It appears from the said inspection result that the said unit bogged down in September 1986, and in that incident all con/rod bearings were replaced with old sets taken from Dorelco Units. The same con/rod bearings were likewise noted to be due for replacement in (sic) December 17, 1987. Lastly, the said engine unit at the time it broke down had a total running hours [of] 21,332.1 far exceeding the tolerable maximum requirement of 18,000 hrs. The above attendant circumstances shows (sic) that Pielstick Engine No. 2 broke down last January 21, 1988 not due to the negligence of the complainant but due to worn out spare parts and its continued operation beyond the schedule of replacement of con/rod bearing on December 17 1987."^[8]

Petitioner claimed below that Raquiza's dismissal was not solely attributable to the January 21, 1988, incident but was, in fact, a result of a "long string of neglect and violations of company R & R (rules and regulations)." But this is beside the point. What is significant is that the employer bears the burden of proving that the dismissal of an employee is for a just cause, failing which the dismissal cannot be deemed justified thus entitling the latter to reinstatement.^[9] The decision to dismiss must be in accord with the law and the evidence and not merely the whim or caprice of the employer.^[10]

IN VIEW OF THE FOREGOING, the petition is DISMISSED for failing to show that respondent National Labor Relations Commission committed grave abuse of discretion in arriving at its assailed decision dated March 10, 1994, and order dated April 28, 1994.

SO ORDERED.

Regalado, (Chairman), Puno, Mendoza, and Torres, Jr., JJ., concur.

[1] As amended by Sec 11. R.A. 6715.

[2] 177 SCRA 580 (1989).

[3] Citing Sosito v. Aguinaldo Development Corp., 156 SCRA 392 (1987).

[4] 240 SCRA 212 (1994).

[5] 233 SCRA 439 (1994).

[6] Rollo, p. 23.

[7] Ibid., p. 24.

[8] Id., pp. 43-44.

[9] Molave Tours Corporation vs. NLRC, 250 SCRA 325 [1995].

[10] Pampanga II Electric Cooperative, Inc. vs. NLRC, 250 SCRA 31 [1995].

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