

MAGNOLIA CORPORATION AND MR. NATHANIEL E. ORILLAZAREA SALES MANAGER, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND MR. ROMEO A. VESTIL, RESPONDENTS.

G.R. No. 116813. November 24, 1995

Ponente: PUNO, J.

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PUNO, J.:

This is a special civil action for certiorari under Rule 65 of the Revised Rules of Court to review the Resolutions of the National Labor Relations Commission dated April 21, 1994 and June 29, 1994,[1] which, among others, ruled that petitioners illegally dismissed private respondent Romeo A. Vestil.

Private respondent was a route salesman of petitioner Magnolia Corporation assigned in its Sales Office in Angeles City, Pampanga. He has faithfully served petitioners for ten (10) years as borne by the numerous awards bestowed on him by said company, viz:

"1986 - Awarded as 1986 Salesman of the Year - Tetra Route Category; National Level.

1987 - Promoted as Ice Cream Salesman.

1988 - He was given an award of achievement for his exceptional performance and valuable share in the achievement of the 1988 sales objective which exceeded budget by 6% and last year's performance (1987) by 27%.

July 1989 - Achieved the highest FDS sales performance in North Luzon Area.

December 1989 - He was given a commendation letter by the National Sales Manager - Mr. Jaime A. To, for his Record Breaking Sales.

March 1990 - He was given a commendation letter by the National Sales Manager - Mr. Jaime A. To, for his Record Breaking Sales.

January 1990 - He was given a plaque of recognition for his extraordinary achievement in opening new outlets, for hard work, dedication and excellence exhibited, for valuable share in the attainment of 1989 sales objectives in surpassing 1988 objectives and surpassing 1988 performance by 14.3% thereby contributing substantially to the growth and profitability of the company.

January 1991 - He was given a certificate of recognition for his valuable contribution to the achievement of an all time High Record Breaking Sales.

May 1991 - He was given a certificate of achievement for his extraordinary performance in opening new outlets, control of damage and account receivables.

- For his hard work and dedication exhibited, thus, exceeded his sales objective for the month of April, 1991, thereby contributing to the growth and profitability of the company.

November 1991 - He was given again a certificate of achievement for his extraordinary performance in opening new outlets, control of damages, and account receivables for the month of October, 1991."[2]

In 1992, petitioner corporation launched a "Special Dealer Incentive Promo" to increase its sales volume. In this promotional scheme, the dealer is entitled to receive free ice cream products consisting of one gallon or two half-gallon regular ice cream for every P4,000.00 worth of ice cream purchased from the route salesman, and an additional half-gallon regular ice cream for every P2,000.00 worth of ice cream purchased in excess of P4,000.00.[3]

On March 10 and 11, 1992, private respondent reported in his Daily Product Incentive Report that the following outlets received free ice cream products as incentive under the said promotional scheme, viz:

Invoice

No.

Date

Outlet

Incentive

Product

Amount

123051 3-11-92 Edith Bakeshop 2 half-gallon P4,732.50

123053 3-11-92 Arnel & Sally 2 half-gallon P4,067.25

123052 3-11-92 A.T. Food Mart 2 half-gallon P5,015.25

122897 3-10-92 Gomez 2 half-gallon P4,988.50

122898 3-10-92 Morales Store 2 half-gallon P8,053.75

However, during the routine confirmation conducted by the petitioner corporation, representatives from these outlets denied having received the incentive products.[4]

The petitioner corporation also discovered that private respondent had delayed remitting the check in the amount of P10,533.30 paid by Cindy's Bakeshop for its purchases made on February 21, 1992. The payment was made on February 21, 1992, but it was remitted only on February 27, 1992.[5]

The petitioner corporation conducted an investigation where private respondent was asked to explain the aforementioned irregularities. Thereafter, petitioner corporation found private respondent guilty of misappropriation and withholding of company funds, amounting to breach of trust and serious misconduct. It terminated private respondent's services.[6]

Private respondent filed with the NLRC a complaint for illegal dismissal against petitioner corporation and its sales manager, Nathaniel E. Orillazarea. Conciliation proceedings were held before Labor Arbiter Ariel C. Santos. As the parties failed to reach an amicable settlement, the parties were ordered to file their position papers. Private respondent also filed a Reply to the company's position paper.

In his Reply, private respondent charged the petitioner corporation with unfair labor practice for the first time. Private respondent alleged that his dismissal was intended to bust the union being formed by its sales personnel headed by him.[7] The petitioners did not file any rejoinder to Reply.[8]

On November 26, 1992, Labor Arbiter Ariel C. Santos rendered a Decision, the dispositive portion of which reads:

"WHEREFORE, respondents are hereby declared guilty of unfair labor practice for violating Article 248 of the Labor Code which prohibits employers from interfering, restraining or coercing employees in the exercise of their right to self-organization.

FURTHER, respondents have dismissed complainant without valid cause and therefore respondents are directed to reinstate complainant to his former position with full backwages even pending appeal and without loss of any benefits accruing before and during the pendency of the instant case until actual reinstatement.

Considering the fact that the dismissal of complainant is tainted with malice, or bad faith, complainant is entitled to the sum of Three Hundred Thousand (P300,000) Pesos as moral damages to assuage the wounded feelings and besmirched reputation of complainant. To set as an example to obviate the repetition of the same to similarly situated employees, the sum of One Hundred Thousand (P100,000.00) Pesos is hereby awarded as exemplary damages.

Finally the sum of 10% of all sums owing to complainant is hereby awarded as attorney's fees."[9]

The petitioners appealed to the NLRC. In its Resolution dated April 21, 1994, the NLRC affirmed the Decision of the Labor Arbiter but deleted the awards of moral and exemplary damages and attorney's fees.[10] Petitioners' Motion for Reconsideration was denied in a Resolution dated June 29, 1994.[11]

Hence, the present Petition alleging that:

"The respondent NLRC committed grave abuse of discretion in finding that the dismissal of private respondent was without a just and valid cause and that petitioners are guilty of unfair labor practice thereby entitling private respondent to backwages and damages."[12]

The petition raises two issues:

1. Whether or not private respondent was validly dismissed; and
2. Whether or not petitioner Magnolia Corporation is guilty of unfair labor practice.

The petitioner corporation asserts that private respondent was validly dismissed. It is alleged that private respondent made it appear in his Daily Product Incentive Report that several outlets received free ice cream products from him so he could obtain free gallons of ice cream for his own personal use.[13] It is also alleged that private respondent misappropriated or withheld the amount paid by Cindy's Bakeshop when he failed to remit the check to the company on time.[14] These acts allegedly constitute serious misconduct and breach of trust which justify the dismissal of private respondent.

We reject this contention.

Article 282 of the Labor Code authorizes the employer to terminate the services of an employee for just cause, thus:

"Art. 282. Termination by employer.— An employer may terminate an employment for any of the following causes:

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

xxx xxx xxx

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

xxx xxx xxx"

It is well settled that the burden of proving that the termination of an employee is for a valid or authorized cause rests on the employer.[15]

In the case at bar, the petitioners failed to present substantial evidence to justify the dismissal of private respondent. They did not present as witness the persons who conducted the routine confirmation. Neither did they submit their affidavits. The only evidence they offered are the handwritten notes and certifications from alleged representatives of the outlets denying that they received the promotional items reported in private respondent's Daily Product Incentive Report.[16] These notes and certifications are, however, entitled to little weight for they were not sworn to and their authors do not appear to have been presented in the proceedings a quo.

On the other hand, private respondent proved that the free gallons of ice cream were actually received by persons though not by those who made the notes and certifications. These recipients of the incentive products confirmed in an Inter-Office Memorandum[17] that they indeed received free gallons of ice cream from private respondent in line with the company's promotional scheme.[18]

The records also show that the delay in the remittance of the check paid by Cindy's Bakeshop was satisfactorily explained by private respondent. The delay cannot be attributed to private respondent but to his helper, Remigio Silva, and to a third man, Ronnie Silva. Ronnie Silva collected the payment of Cindy's Bakeshop in the afternoon of February 21, 1992, a Friday. On the next working day, which was a Monday, Ronnie Silva did not report for work. He remitted the check to private respondent only on February 26, 1992. Upon receipt of the check, private respondent immediately turned it over to the petitioner corporation.[19]

Both the Labor Arbiter and the respondent NLRC gave credence to the evidence of the private respondent that he was illegally dismissed. We are not free to tamper with their calibration of the weight of evidence in the absence of a clear showing that it is arbitrary and bereft of any rational basis.

To be sure, even if the petitioners' allegations were true, the penalty of dismissal would be too harsh and disproportionate to the offense committed by private respondent, considering his clean record of ten long years of continuous and faithful service to the company. The numerous awards received by private respondent[20] show how well he has served the company. While an employer has an inherent right to discipline its employees, we have always held that this right must always be exercised humanely and the penalty it must impose must be commensurate to the offense involved and to the degree of its infraction.[21] Social justice should be a living reality and not a mere high level abstraction in the fundamental law of the land.

We now come to the second issue of whether the petitioners committed unfair labor practice. The Labor Arbiter ruled:

"Anent the first issue, complainant alleged in his Reply to Respondents' Position Paper filed on October 23, 1992 that respondents are guilty of acts constituting unfair labor practice when the latter was engaged in union-busting activities. Complainant cited the incident when Mr. Jaime To, National Sales Manager of respondent company approached complainant and prodded him into dissociating himself from joining a group of salesmen forming a Sales Union. Coupled with the previous act was the break-up of the union in its formative stage when elected union officers like salesman Manuel Guevarra was promoted by respondents to Regional Sales Manager, a certain Manny Dabu, a Union Director was promoted to regular sales representative and so with Mr. Fred Valencia.

This grievous charge of acts constituting Unfair Labor Practice was never denied nor rebutted by respondents and under the rules of Evidence, it is deemed admitted." [22]

The respondent NLRC affirmed this ruling in the following wise:

"Substantial evidence applies where the issues have been joined and therefore should be weighed and associated with other circumstances of the case, not when the material allegations are not denied and therefore deemed admitted. It should be noted that respondents-appellants had not denied or much less refuted the charges and allegations of Unfair Labor Practice. They simply ignored or avoided the factual issue by curtly alleging that the failure to accede to the request of Jaime To from organizing a union for salesmen xxx (is) of no moment and untenable." [23]

Apparently, the public respondent relied upon Rule 9 Section 1 of the Revised Rules of Court which provides that material averments in the complaint, other than those as to the amount of damages, shall be deemed admitted when not specifically denied. [24] Under this rule, when a party fails to specifically deny a material allegation in the complaint, he is deemed to have admitted such allegation and no evidence will be required to prove the same. Hence, the public respondent concluded that the petitioners' failure to dispute private respondent's allegations in its Reply to their position paper amounts to an admission of the facts alleged therein.

We do not agree.

The petitioners cannot be deemed to have admitted private respondent's allegation of unfair labor practice in his Reply. Petitioners were under no obligation to file a rejoinder to private respondent's Reply to their position paper. The purpose of a reply is to deny or allege facts in denial of new matters alleged by way of defense in the answer. It is not the office or function of a reply to set up or introduce a new cause of action or to amend or amplify the complaint. [25] Private respondent improperly raised the issue of unfair labor practice in his Reply since parties are not allowed to amend their cause of action or allege a new and additional cause of action in a reply. Section 3 Rule V of the New Rules of Procedure of the NLRC provides:

"Section 3. Submission of Position Papers/Memorandum. -- Should the parties fail to agree upon an amicable settlement, either in whole or in part, during the conferences, the Labor Arbiter shall issue an order stating therein the matters taken up and agreed upon during the conferences and directing the parties to simultaneously file their respective verified position papers.

These verified position papers shall cover only those claims and causes of action raised in the complaint excluding those that may have been amicably settled, and shall be accompanied by all supporting documents including the affidavits of their respective witnesses which shall take the place of the latter's direct testimony. The parties shall thereafter not be allowed to allege facts, or present evidence to prove facts, not referred to and any cause or causes of action not included in the complaint or position papers, affidavits and other documents. Unless otherwise requested in writing by both parties to submit simultaneously their position papers/memorandum with the supporting documents and affidavits within fifteen (15) calendar days from the date of the last conference, with proof of having furnished each other with copies thereof." (Italics supplied)

Clearly, the New Rules of Procedure of the NLRC prohibit parties from making new allegations or cause of action not included in the complaint or position papers, affidavits and other documents. In the instant case, private respondent raised the issue of unfair labor practice only after the parties have submitted their respective position papers. Thus, the Labor Arbiter and the NLRC gravely abused their discretion in taking cognizance of such issue. In *Manebo vs. NLRC*, [26] we held:

". . . while it is true that the Rules of the NLRC must be liberally construed and that the NLRC is not bound by the technicalities of law and procedure, the Labor Arbiters and the NLRC itself must not be the first to arbitrarily disregard specific provisions of the Rules which are precisely intended to assist the parties in

obtaining just, expeditious and inexpensive settlement of labor disputes. One such provision is Section 3, Rule V of the New Rules of Procedure of the NLRC which requires the submission of verified position papers within fifteen days from the date of the last conference, with proof of service thereof on the other parties. The position papers 'shall cover only those claims and causes of action raised in the complaint excluding those that may have been amicably settled, and shall be accompanied by all supporting documents including the affidavits of their respective witnesses which shall take the place of the latter's testimony.' After the submission thereof, the parties 'shall . . . not be allowed to allege facts, or present evidence to prove facts, not referred to and any cause or causes of action not included in the complaint or position papers, affidavits and other documents.'"

We need only add that the procedural error of the public respondent resulted in its ruling condemning petitioners of unfair labor practice. A finding of an unfair labor practice is not to be taken lightly for the Labor Code has again criminalized these practices. Article 247 unequivocally provides that ". . . unfair labor practices are not only violations of the civil rights of both labor and management but are also criminal offenses against the state which shall be subject to prosecution and punishment . . ." Petitioners cannot be found guilty of unfair labor practice on the basis of an allegation sneaked in the Reply of the private respondent. Due process bars such an approach.

IN VIEW WHEREOF, the Resolutions dated April 21, 1994 and June 24, 1994 of the respondent NLRC are **AFFIRMED** with the modification that the portion finding petitioners guilty of unfair labor practice is **SET ASIDE**. No costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, Mendoza, and Francisco, JJ., concur.

[1] They affirmed the Decision of Labor Arbiter Ariel C. Santos in NLRC Case no. RAB-III-06-2818-92 entitled "Romeo A. Vestil vs. Magnolia Corporation and Mr. Nathaniel E. Orillazarea, Sales Manager," but deleted the awards of moral and exemplary damages and attorney's fees.

[2] Rollo, pp. 149-150.

[3] Rollo, p. 4.

[4] Rollo, p. 4.

[5] Rollo, pp. 4-5.

[6] Rollo, p. 5.

[7] Rollo, p. 44.

[8] Rollo, p. 44.

[9] Rollo, p. 49.

[10] Rollo, p. 37.

[11] Rollo, p. 39.

[12] Rollo, p. 7.

[13] Rollo, pp. 8-12.

[14] Rollo, pp. 13-14.

[15] Article 277 (b), Labor Code; Mapalo vs. NLRC, 233 SCRA 266 (1994).

[16] Rollo, pp. 50-57.

[17] Dated March 16, 1992.

[18] Rollo, p. 45.

[19] Rollo, p. 35.

[20] See Rollo, pp. 47-48.

[21] Tanduay Distillery Labor Union, et. al. vs. NLRC, 239 SCRA 1 (1994); Bonotan vs. NLRC, 237 SCRA 717 (1994); Sampang vs. Inciong, 137 SCRA 56 (1985).

[22] Rollo, p. 44.

[23] Rollo, pp. 33-34.

[24] SECTION 1. Allegations not specifically denied deemed admitted.-- Material averment in the complaint, other than those as to the amount of damage, shall be deemed admitted when not specifically denied. Allegations of usury are deemed admitted if not denied specifically and under oath.

[25] Martin, Rules of Court in the Philippines with Notes and Comments, Vol. I, (Revised Edition, 1989), pp. 301-302.

[26] 229 SCRA 240 (1994).

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