

**CONRADO SAMILLANO AND MYRNA V. SAMILLANO, PETITIONERS,
VS. NATIONAL LABOR RELATIONS COMMISSION, DAN-AGSA
DAKBAYAN BROADCASTING CORPORATION RADIO STATION DXDD,
MSGR. JESUS DOSADO...**

G.R. No. 117582. December 23, 1996

Ponente: PADILLA, J.

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PADILLA, J.:

This petition for certiorari under Rule 65 of the Rules of Court refers to two (2) cases filed by petitioner-spouses Conrado and Myrna Samillano against private respondents Dan-ag sa Dakbayan Broadcasting Corporation-Radio Station DXDD and/or Msgr. Jesus Dosado and/or Simplicia Neri, Chairman of the Board and Manager respectively of said respondent corporation.

The first case, filed by petitioner-spouses on 8 February 1991, is a complaint for illegal demotion while the second complaint filed on 20 May 1991 is for illegal dismissal, payment of backwages, commissions and other monetary claims.

The two (2) complaints before Regional Arbitration Branch No. 10, Cagayan de Oro City of the National Labor Relations Commission (NLRC) docketed as NLRC RAB Case Nos. 10-03-00195 and 10-06-00371-91 were later consolidated since they involve the same parties and issues.

The undisputed facts of the two (2) cases are as follows:

1. Petitioner-spouses Conrado and Myrna Samillano were hired by private respondents on 1 October 1981 and 1 August 1983 respectively;
2. On 2 October 1990, Conrado Samillano was transferred to the Technical Department as an SSB Operator from his previous position as Traffic Supervisor of private respondent corporation. On the same day, his wife Myrna V. Samillano was transferred to the AM Production Department from her position as cashier of respondent corporation;
3. As a result of the transfers, the petitioner-spouses filed the complaint for illegal demotion contending that the transfers resulted in loss of commissions and violated their security of tenure;
4. On 20 May 1991, petitioner-spouses filed the complaint for illegal dismissal contending that private respondents terminated their employment on 23 April 1991 without any lawful cause;
5. Private respondents relied on allegations that petitioner-spouses misappropriated funds of the radio station and committed acts of insubordination which resulted in loss of trust and confidence, upon which their dismissals were based;
6. In a supplemental position paper, herein petitioners contended that their demotion and subsequent dismissal

were retaliatory acts of private respondents for their having reported violations by private respondents of labor laws particularly underpayment/nonpayment of salaries and other benefits;

Labor Arbiter Noel Augusto S. Magbanua, to whom the cases were assigned, found that sometime in July 1989, the Department of Labor and Employment conducted an inspection of the premises of private respondent corporation and initially found deficiencies in wages and other benefits given to employees.

It was further determined that in March or April 1990, private respondents conducted meetings with their employees seeking a compromise of the unpaid benefits. Some employees executed waivers of further claims against private respondents. Herein petitioners refused to sign said waivers.

The labor arbiter formulated the following issues for resolution:[1]

- 1) whether complainants' demotion and subsequent termination of employment were retaliatory acts for complainants' having allegedly reported respondents' violations of labor laws,
- 2) whether complainants' demotions were illegal; and
- 3) whether complainants' terminations from employment were illegal.

The labor arbiter resolved the first two (2) issues in the negative. He declared that no evidence was presented to show that the demotions of petitioners were linked to their reporting of alleged violations by private respondents of the Labor Code.

The labor arbiter further upheld management's prerogative, in the absence of bad faith, to protect its rights in relation to the alleged offenses committed by petitioners. The demotions of petitioners were therefore upheld.

With respect to the dismissal of petitioners from employment, however, the labor arbiter found that the alleged misappropriations of funds committed by petitioners were not adequately substantiated. Hence, the dismissal of petitioners was declared illegal.

The labor arbiter ruled however that instead of reinstatement, it would be for the best interest of the parties considering the strained relations between them, to award petitioners separation pay equivalent to one (1) month salary for every year of service. Full backwages were not awarded based on findings that petitioners acted in an arrogant and uncooperative manner during the investigation of their case which could be a possible reason why private respondents were not able to prove the formers' involvement in the financial irregularities subject of this case.[2] Only six (6) months backwages were awarded to each of the complainants (herein petitioners).

Finally, the labor arbiter denied petitioners' claims for unpaid commissions for lack of evidence.

Appeal by private respondents to the NLRC was dismissed on 9 February 1994 for their failure to properly perfect their appeal. The NLRC found that private respondents had filed their notice of appeal without attaching thereto their appeal memorandum as required by Section 3 Rule VI of the Rules of Procedure of the NLRC. There was therefore failure to perfect the appeal within the reglementary period of ten (10) days from receipt of the assailed labor arbiter's decision.

On 30 June 1994, the NLRC reinstated the appeal based on findings that while the notice of appeal and appeal memorandum were received by the NLRC on 15 July 1993 and 20 July 1993 respectively, or way beyond the period for appeal which expired on 3 July 1993, both pleadings were, however, actually mailed on 2 July 1993 as evidenced by Registry Receipt No. 77 of the Tangub Post Office.[3]

On the merits of the appeal, the NLRC ruled that private respondents have substantiated their claim of having lost trust and confidence in petitioners due to serious irregularities in the performance of their duties.

The NLRC held that, contrary to the findings of the labor arbiter, an audit report submitted by a certain Domeciano Adaya dated 17 September 1990 showed substantial evidence of petitioners' involvement in irregularities including misappropriations of funds, non-turnover of collections and misuse of funds for personal purposes. The NLRC relied on reports made by Janice Poncianos, the Finance Department Business Head of respondent corporation's radio station addressed to the station manager as well as the report of the station manager to the chairman of the board of respondent corporation on the alleged acts of herein petitioners.[4]

Based on the above findings, the NLRC set aside the assailed decision and ruled that petitioners were validly dismissed. However, private respondents were ordered to indemnify petitioners the amount of P2,000.00 each for violation of the latter's right to due process. The NLRC agreed with the petitioners that there was no formal investigation wherein the latter were given the chance to defend themselves against the charges levelled against them.[5]

In their petition before this Court, it is argued by petitioners that:

1. The NLRC gravely abused its discretion in holding that the dismissals of herein petitioners were valid; and
2. The NLRC gravely abused its discretion in merely imposing a sanction on private respondents for violation of petitioners' right to due process.[6]

Before ruling on the merits of this petition, the Court takes notice of a peculiar circumstance regarding the appeal of the private respondents from the decision of the labor arbiter.

In the resolution reinstating private respondents' appeal, the NLRC found that the notice of appeal and memorandum on appeal were received on 15 July 1993 and 20 July 1993 respectively. The reason for reinstating the appeal was the finding that both pleadings were actually mailed on 2 July 1993 as evidenced by Registry Receipt No. 77 postmarked on the same date at the Tuguegarao City Post Office.

It is unexplained however why two (2) pleadings mailed together using a single registry receipt and presumably contained in one (1) envelope would be received on two (2) different dates. It should be pointed out that in the motion for reconsideration of the resolution dismissing the appeal, herein private respondents averred mailing only the notice of appeal and a postal money order to cover appeal fees on 2 July 1993. Be that as it may, the Court shall proceed to resolve this case on the merits despite the possible technicality of the appeal being filed late with the NLRC. The NLRC is however reminded to be more accurate in recording the dates of mailing and receipt of pleadings filed before it since this is essential in the speedy and correct disposition of cases.

Petitioners do not dispute before this Court the validity of their re-assignments. It is clear that the re-assignments were a valid exercise of management prerogative pending investigation of the alleged irregularities. The purpose of the re-assignments is no different from that of preventive suspension which private respondents could likewise have validly imposed on petitioners; to protect the employer's property pending investigation of the alleged malfeasance or misfeasance committed by the employee.[7]

In the present case, the labor arbiter correctly held that there is no evidence to show that the transfer of petitioners to other positions and the subsequent termination of their employment were retaliatory acts of private respondents for petitioners' reporting of the alleged violations by private respondents of the Labor Code.

The legality of petitioners' dismissal would be determined based on whether or not private respondents have proved the basis for loss of trust and confidence upon which the dismissals are based.

In *China City Restaurant Corporation v. NLRC*[8] the Court held thus:

"For loss of trust and confidence to be a valid ground for the dismissal of employees, it must be substantial and

not arbitrary, whimsical, capricious or concocted.

Irregularities or malpractices should not be allowed to escape the scrutiny of this Court. Solicitude for the protection of the rights of the working class are of prime importance. Although this is not a license to disregard the rights of management, still the Court must be wary of the ploys of management to get rid of employees it considers as undesirable."

The NLRC based its decision upholding petitioners' dismissal on the conclusion that the irregularities involving petitioners were more than sufficient to make out a case of loss of trust and confidence.[9]

Said irregularities allegedly involving petitioners were enumerated in An Updated Report dated 17 August 1990 submitted by the Finance Department Business Head Janice Procionos and various letter-memos to petitioners as well as the audit report dated 17 September 1990 submitted by Domeciano Adaya.

But petitioners correctly argue that the above-mentioned documents do not provide enough basis for termination of their employment based on loss of trust and confidence.

The Adaya audit report in part reads:

"I am suggesting with a request that the above-mentioned observations be reviewed and confirmed by the Station Accountant, Bookkeeper, Collector and Cashier or Cash Custodian in my presence in fairness to everyone before I give conclusion, implication or opinion to these observations. They may also give comments or raise objections, if any. The comments or objections may be made orally or in writing.

In this connection, as I don't have line authority over the personnel concerned may I request you to ask them to review and confirm by observations."

There is no evidence to show that herein private respondents undertook to review and/or confirm the observations contained in the audit report as recommended by the audit report itself.

On the contrary, even in their comment on the petition filed with this Court, which respondents' later adopted as their memorandum, the dismissal of herein petitioners is justified mainly on the basis of said audit report submitted by Domeciano Adaya.[10]

It is, however, clear from the above-quoted portion of the audit report that the findings contained therein do not categorically find herein petitioners guilty of committing irregularities. The clear import of the said audit report is that further investigation and verification would be necessary to pinpoint the source of the irregularities.

There is thus no evidence on record to show that any further investigation and verification were done by private respondents. What is apparent is that petitioners were made to answer charges of misconduct based on suspicions which lacked adequate basis.

While the law and this Court recognize the right of an employer to dismiss an employee based on loss of trust and confidence, the former's evidence must clearly and convincingly establish the facts upon which the loss of trust and confidence in the employee is based.[11]

In the present case, the unsubstantiated suspicions and baseless conclusions of private respondents do not provide legal justification for dismissing herein petitioners. The doubt in this case should be resolved in favor of labor pursuant to the social justice policy of labor laws and the Constitution.

Finally, on petitioners' right to due process, we uphold the NLRC findings that no formal investigation was conducted prior to dismissal of petitioners. Private respondents thus failed to adequately comply with the requirement that an employee should be given the opportunity to be heard and to defend himself before he is

dismissed. In *San Antonio v. NLRC*,^[12] the Court stated that "proper compliance with the twin requirements of notice and hearing are conditions sine qua non before a dismissal may be validly effected. x x x Any procedural shortcut, that effectively allows an employer to assume the roles of both accuser and judge at the same time, should not be countenanced." (emphasis supplied).

In the present case, the notices/memoranda to petitioners requiring explanations/answers to the charges against them were plainly meant to provide a semblance of compliance with the due process requirement which the NLRC correctly ruled to be inadequate.

The Court will not be deceived by schemes to circumvent the requirements of law and the Constitution. For failure to fully comply with the requirements of due process, private respondents should, as a matter of course, indemnify the petitioners but we refrain from awarding damages on this score since we are awarding separation pay and backwages due to petitioners' illegal dismissal.

The above-finding that petitioners were illegally dismissed normally requires that they be reinstated to their former or equivalent positions with full backwages. In this case, however, the relationships between petitioners and private respondents have undoubtedly become very strained, hence, separation pay in lieu of reinstatement is proper.^[13] However, as a consequence of petitioners' illegal dismissal, full backwages from date of dismissal to the finality of this decision are due the petitioners in line with the ruling in the *Bustamante* case.^[14]

WHEREFORE, the decision appealed from is hereby SET ASIDE and a new one entered:

1. DECLARING the dismissal from employment of petitioners NULL and VOID;
2. ORDERING private respondents to pay petitioners' separation pay at the rate of ONE-HALF (1/2) MONTH salary for every year of service; and
3. ORDERING private respondents to pay petitioners full backwages from date of illegal dismissal to the finality of this decision.

SO ORDERED.

Bellosillo, Kapunan, and Hermosisima, Jr., JJ., concur.
Vitug, J., on leave.

[1] Rollo, p. 28.

[2] Decision of Labor Arbiter, pp. 8-9; Rollo pp. 31-32.

[3] NLRC Resolution, p. 1; Rollo, p. 41.

[4] NLRC Resolution, p. 7; Rollo p. 46-a.

[5] NLRC Resolution, p. 9; Rollo p. 48.

[6] Petition, p. 4; Rollo, p. 6.

[7] *Globe-Mackay Cable and Radio Corp. v. NLRC*, G.R. No. 82511, 3 March 1992, 206 SCRA 701.

[8] G.R. No. 97196, 22 January 1993, 217 SCRA 443.

[9] NLRC Resolution, p. 7, Rollo, p. 46-A.

[10] Private Respondents' Comment, p. 5; Rollo p. 93.

[11] Imperial Textile Mills, Inc. v. NLRC, G.R. No. 101527, 19 January 1993, 217 SCRA 237.

[12] G.R. No. 100829, 28 November 1995, 150 SCRA 359.

[13] De Vera v. NLRC, G.R. No. 93212, 22 November 1990, 191 SCRA 632.

[14] Resolution of the Court en banc dated 28 November 1996 in G.R. No. 111651 denying motion for reconsideration of the decision of the First Division dated 15 March 1996 in Bustamante, et. al. v. NLRC et al..

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