

NORMA MABEZA, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, PETER NG/HOTEL SUPREME, RESPONDENTS.

G.R. No. 118506. April 18, 1997

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This petition seeking the nullification of a resolution of public respondent National Labor Relations Commission dated April 28, 1994 vividly illustrates why courts should be ever vigilant in the preservation of the constitutionally enshrined rights of the working class. Without the protection accorded by our laws and the tempering of courts, the natural and historical inclination of capital to ride roughshod over the rights of labor would run unabated.

The facts of the case at bar, culled from the conflicting versions of petitioner and private respondent, are illustrative.

Petitioner Norma Mabeza contends that around the first week of May, 1991, she and her co-employees at the Hotel Supreme in Baguio City were asked by the hotel's management to sign an instrument attesting to the latter's compliance with minimum wage and other labor standard provisions of law.[1] The instrument provides:[2]

JOINT AFFIDAVIT

We, SYLVIA IGANA, HERMINIGILDO AQUINO, EVELYN OGOY, MACARIA JUGUETA, ADELAIDA NONOG, NORMA MABEZA, JONATHAN PICART and JOSE DIZON, all of legal ages (sic), Filipinos and residents of Baguio City, under oath, depose and say:

1. That we are employees of Mr. Peter L. Ng of his Hotel Supreme situated at No. 416 Magsaysay Ave., Baguio City;
2. That the said Hotel is separately operated from the Ivy's Grill and Restaurant;
3. That we are all (8) employees in the hotel and assigned in each respective shifts;
4. That we have no complaints against the management of the Hotel Supreme as we are paid accordingly and that we are treated well.
5. That we are executing this affidavit voluntarily without any force or intimidation and for the purpose of informing the authorities concerned and to dispute the alleged report of the Labor Inspector of the Department of Labor and Employment conducted on the said establishment on February 2, 1991.

IN WITNESS WHEREOF, we have hereunto set our hands this 7th day of May, 1991 at Baguio City, Philippines.

(Sgd.) (Sgd.) (Sgd.)

SYLVIA IGAMA HERMINIGILDO AQUINO EVELYN OGOY

(Sgd) (Sgd.) (Sgd.)

MACARIA JUGUETA ADELAIDA NONOG NORMA MABEZA

(Sgd) (Sgd.)

JONATHAN PICART JOSE DIZON

SUBSCRIBED AND SWORN to before me this 7th day of May, 1991, at Baguio City, Philippines.

Asst. City Prosecutor

Petitioner signed the affidavit but refused to go to the City Prosecutor's Office to swear to the veracity and contents of the affidavit as instructed by management. The affidavit was nevertheless submitted on the same day to the Regional Office of the Department of Labor and Employment in Baguio City.

As gleaned from the affidavit, the same was drawn by management for the sole purpose of refuting findings of the Labor Inspector of DOLE (in an inspection of respondent's establishment on February 2, 1991) apparently adverse to the private respondent.[3]

After she refused to proceed to the City Prosecutor's Office - on the same day the affidavit was submitted to the Cordillera Regional Office of DOLE - petitioner avers that she was ordered by the hotel management to turn over the keys to her living quarters and to remove her belongings from the hotel premises.[4] According to her, respondent strongly chided her for refusing to proceed to the City Prosecutor's Office to attest to the affidavit.[5] She thereafter reluctantly filed a leave of absence from her job which was denied by management. When she attempted to return to work on May 10, 1991, the hotel's cashier, Margarita Choy, informed her that she should not report to work and, instead, continue with her unofficial leave of absence. Consequently, on May 13, 1991, three days after her attempt to return to work, petitioner filed a complaint for illegal dismissal before the Arbitration Branch of the National Labor Relations Commission - CAR Baguio City. In addition to her complaint for illegal dismissal, she alleged underpayment of wages, non-payment of holiday pay, service incentive leave pay, 13th month pay, night differential and other benefits. The complaint was docketed as NLRC Case No. RAB-CAR-05-0198-91 and assigned to Labor Arbiter Felipe P. Pati.

Responding to the allegations made in support of petitioner's complaint for illegal dismissal, private respondent Peter Ng alleged before Labor Arbiter Pati that petitioner "surreptitiously left (her job) without notice to the management"[6] and that she actually abandoned her work. He maintained that there was no basis for the money claims for underpayment and other benefits as these were paid in the form of facilities to petitioner and the hotel's other employees.[7] Pointing to the Affidavit of May 7, 1991, the private respondent asserted that his employees actually have no problems with management. In a supplemental answer submitted eleven (11) months after the original complaint for illegal dismissal was filed, private respondent raised a new ground, loss of confidence, which was supported by a criminal complaint for Qualified Theft he filed before the prosecutor's office of the City of Baguio against petitioner on July 4, 1991.[8]

On May 14, 1993, Labor Arbiter Pati rendered a decision dismissing petitioner's complaint on the ground of loss of confidence. His disquisitions in support of his conclusion read as follows:

It appears from the evidence of respondent that complainant carted away or stole one (1) blanket, 1 piece bedsheet, 1 piece thermos, 2 pieces towel (Exhibits '9', '9-A,' '9-B,' '9-C' and '10' pages 12-14 TSN, December 1, 1992).

In fact, this was the reason why respondent Peter Ng lodged a criminal complaint against complainant for qualified theft and perjury. The fiscal's office finding a prima facie evidence that complainant committed the

crime of qualified theft issued a resolution for its filing in court but dismissing the charge of perjury (Exhibit '4' for respondent and Exhibit 'B-7' for complainant). As a consequence, complainant was charged in court for the said crime (Exhibit '5' for respondent and Exhibit 'B-6' for the complainant).

With these pieces of evidence, complainant committed serious misconduct against her employer which is one of the just and valid grounds for an employer to terminate an employee (Article 282 of the Labor Code as amended).[9]

On April 28, 1994, respondent NLRC promulgated its assailed Resolution[10] affirming the Labor Arbiter's decision. The resolution substantially incorporated the findings of the Labor Arbiter.[11] Unsatisfied, petitioner instituted the instant special civil action for certiorari under Rule 65 of the Rules of Court on the following grounds:[12]

1. WITH ALL DUE RESPECT, THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION COMMITTED A PATENT AND PALPABLE ERROR AMOUNTING TO GRAVE ABUSE OF DISCRETION IN ITS FAILURE TO CONSIDER THAT THE ALLEGED LOSS OF CONFIDENCE IS A FALSE CAUSE AND AN AFTERTHOUGHT ON THE PART OF THE RESPONDENT-EMPLOYER TO JUSTIFY, ALBEIT ILLEGALLY, THE DISMISSAL OF THE COMPLAINANT FROM HER EMPLOYMENT;

2. WITH ALL DUE RESPECT, THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION COMMITTED A PATENT AND PALPABLE ERROR AMOUNTING TO GRAVE ABUSE OF DISCRETION IN ADOPTING THE RULING OF THE LABOR ARBITER THAT THERE WAS NO UNDERPAYMENT OF WAGES AND BENEFITS ON THE BASIS OF EXHIBIT "8" (AN UNDATED SUMMARY OF COMPUTATION PREPARED BY ALLEGEDLY BY RESPONDENT'S EXTERNAL ACCOUNTANT) WHICH IS TOTALLY INADMISSIBLE AS AN EVIDENCE TO PROVE PAYMENT OF WAGES AND BENEFITS;

3. WITH ALL DUE RESPECT, THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION COMMITTED A PATENT AND PALPABLE ERROR AMOUNTING TO GRAVE ABUSE OF DISCRETION IN FAILING TO CONSIDER THE EVIDENCE ADDUCED BEFORE THE LABOR ARBITER AS CONSTITUTING UNFAIR LABOR PRACTICE COMMITTED BY THE RESPONDENT.

The Solicitor General, in a Manifestation in lieu of Comment dated August 8, 1995 rejects private respondent's principal claims and defenses and urges this Court to set aside the public respondent's assailed resolution.[13]

We agree.

It is settled that in termination cases the employer bears the burden of proof to show that the dismissal is for just cause, the failure of which would mean that the dismissal is not justified and the employee is entitled to reinstatement.[14]

In the case at bar, the private respondent initially claimed that petitioner abandoned her job when she failed to return to work on May 8, 1991. Additionally, in order to strengthen his contention that there existed sufficient cause for the termination of petitioner, he belatedly included a complaint for loss of confidence, supporting this with charges that petitioner had stolen a blanket, a bedsheet and two towels from the hotel.[15] Appended to his last complaint was a suit for qualified theft filed with the Baguio City prosecutor's office.

From the evidence on record, it is crystal clear that the circumstances upon which private respondent anchored his claim that petitioner "abandoned" her job were not enough to constitute just cause to sanction the termination of her services under Article 283 of the Labor Code. For abandonment to arise, there must be concurrence of two things: 1) lack of intention to work;[16] and 2) the presence of overt acts signifying the employee's intention not

to work.[17]

In the instant case, respondent does not dispute the fact that petitioner tried to file a leave of absence when she learned that the hotel management was displeased with her refusal to attest to the affidavit. The fact that she made this attempt clearly indicates not an intention to abandon but an intention to return to work after the period of her leave of absence, had it been granted, shall have expired.

Furthermore, while absence from work for a prolonged period may suggest abandonment in certain instances, mere absence of one or two days would not be enough to sustain such a claim. The overt act (absence) ought to unerringly point to the fact that the employee has no intention to return to work,[18] which is patently not the case here. In fact, several days after she had been advised to take an informal leave, petitioner tried to resume working with the hotel, to no avail. It was only after she had been repeatedly rebuffed that she filed a case for illegal dismissal. These acts militate against the private respondent's claim that petitioner abandoned her job. As the Solicitor General in his manifestation observed:

Petitioner's absence on that day should not be construed as abandonment of her job. She did not report because the cashier told her not to report anymore, and that private respondent Ng did not want to see her in the hotel premises. But two days later or on the 10th of May, after realizing that she had to clarify her employment status, she again reported for work. However, she was prevented from working by private respondents.[19]

We now come to the second cause raised by private respondent to support his contention that petitioner was validly dismissed from her job.

Loss of confidence as a just cause for dismissal was never intended to provide employers with a blank check for terminating their employees. Such a vague, all-encompassing pretext as loss of confidence, if unqualifiedly given the seal of approval by this Court, could readily reduce to barren form the words of the constitutional guarantee of security of tenure. Having this in mind, loss of confidence should ideally apply only to cases involving employees occupying positions of trust and confidence or to those situations where the employee is routinely charged with the care and custody of the employer's money or property. To the first class belong managerial employees, i.e., those vested with the powers or prerogatives to lay down management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees or effectively recommend such managerial actions; and to the second class belong cashiers, auditors, property custodians, etc., or those who, in the normal and routine exercise of their functions, regularly handle significant amounts of money or property. Evidently, an ordinary chambermaid who has to sign out for linen and other hotel property from the property custodian each day and who has to account for each and every towel or bedsheet utilized by the hotel's guests at the end of her shift would not fall under any of these two classes of employees for which loss of confidence, if ably supported by evidence, would normally apply. Illustrating this distinction, this Court, in *Marina Port Services, Inc. vs. NLRC*, [20] has stated that:

To be sure, every employee must enjoy some degree of trust and confidence from the employer as that is one reason why he was employed in the first place. One certainly does not employ a person he distrusts. Indeed, even the lowly janitor must enjoy that trust and confidence in some measure if only because he is the one who opens the office in the morning and closes it at night and in this sense is entrusted with the care or protection of the employer's property. The keys he holds are the symbol of that trust and confidence.

By the same token, the security guard must also be considered as enjoying the trust and confidence of his employer, whose property he is safeguarding. Like the janitor, he has access to this property. He too, is charged with its care and protection.

Notably, however, and like the janitor again, he is entrusted only with the physical task of protecting that

property. The employer's trust and confidence in him is limited to that ministerial function. He is not entrusted, in the Labor Arbiter's words, 'with the duties of safekeeping and safeguarding company policies, management instructions, and company secrets such as operation devices.' He is not privy to these confidential matters, which are shared only in the higher echelons of management. It is the persons on such levels who, because they discharge these sensitive duties, may be considered holding positions of trust and confidence. The security guard does not belong in such category.[21]

More importantly, we have repeatedly held that loss of confidence should not be simulated in order to justify what would otherwise be, under the provisions of law, an illegal dismissal. "It should not be used as a subterfuge for causes which are illegal, improper and unjustified. It must be genuine, not a mere afterthought to justify an earlier action taken in bad faith." [22]

In the case at bar, the suspicious delay in private respondent's filing of qualified theft charges against petitioner long after the latter exposed the hotel's scheme (to avoid its obligations as employer under the Labor Code) by her act of filing illegal dismissal charges against the private respondent would hardly warrant serious consideration of loss of confidence as a valid ground for dismissal. Notably, the Solicitor General has himself taken a position opposite the public respondent and has observed that:

If petitioner had really committed the acts charged against her by private respondents (stealing supplies of respondent hotel), private respondents should have confronted her before dismissing her on that ground. Private respondents did not do so. In fact, private respondent Ng did not raise the matter when petitioner went to see him on May 9, 1991, and handed him her application for leave. It took private respondents 52 days or up to July 4, 1991 before finally deciding to file a criminal complaint against petitioner, in an obvious attempt to build a case against her.

The manipulations of private respondents should not be countenanced.[23]

Clearly, the efforts to justify petitioner's dismissal - on top of the private respondent's scheme of inducing his employees to sign an affidavit absolving him from possible violations of the Labor Code - taints with evident bad faith and deliberate malice petitioner's summary termination from employment.

Having said this, we turn to the important question of whether or not the dismissal by the private respondent of petitioner constitutes an unfair labor practice.

The answer in this case must inevitably be in the affirmative.

The pivotal question in any case where unfair labor practice on the part of the employer is alleged is whether or not the employer has exerted pressure, in the form of restraint, interference or coercion, against his employee's right to institute concerted action for better terms and conditions of employment. Without doubt, the act of compelling employees to sign an instrument indicating that the employer observed labor standards provisions of law when he might have not, together with the act of terminating or coercing those who refuse to cooperate with the employer's scheme constitutes unfair labor practice. The first act clearly preempts the right of the hotel's workers to seek better terms and conditions of employment through concerted action.

We agree with the Solicitor General's observation in his manifestation that "[t]his actuation... is analogous to the situation envisaged in paragraph (f) of Article 248 of the Labor Code" [24] which distinctly makes it an unfair labor practice "to dismiss, discharge or otherwise prejudice or discriminate against an employee for having given or being about to give testimony" [25] under the Labor Code. For in not giving positive testimony in favor of her employer, petitioner had reserved not only her right to dispute the claim and proffer evidence in support thereof but also to work for better terms and conditions of employment.

For refusing to cooperate with the private respondent's scheme, petitioner was obviously held up as an example to all of the hotel's employees, that they could only cause trouble to management at great personal inconvenience. Implicit in the act of petitioner's termination and the subsequent filing of charges against her was the warning that they would not only be deprived of their means of livelihood, but also possibly, their personal liberty.

This Court does not normally overturn findings and conclusions of quasi-judicial agencies when the same are ably supported by the evidence on record. However, where such conclusions are based on a misperception of facts or where they patently fly in the face of reason and logic, we will not hesitate to set aside those conclusions. Going into the issue of petitioner's money claims, we find one more salient reason in this case to set things right: the labor arbiter's evaluation of the money claims in this case incredibly ignores existing law and jurisprudence on the matter. Its blatant one-sidedness simply raises the suspicion that something more than the facts, the law and jurisprudence may have influenced the decision at the level of the Arbiter.

Labor Arbiter Pati accepted hook, line and sinker the private respondent's bare claim that the reason the monetary benefits received by petitioner between 1981 to 1987 were less than minimum wage was because petitioner did not factor in the meals, lodging, electric consumption and water she received during the period in her computations.[26] Granting that meals and lodging were provided and indeed constituted facilities, such facilities could not be deducted without the employer complying first with certain legal requirements. Without satisfying these requirements, the employer simply cannot deduct the value from the employee's wages. First, proof must be shown that such facilities are customarily furnished by the trade. Second, the provision of deductible facilities must be voluntarily accepted in writing by the employee. Finally, facilities must be charged at fair and reasonable value.[27]

These requirements were not met in the instant case. Private respondent "failed to present any company policy or guideline to show that the meal and lodging . . . (are) part of the salary;"[28] he failed to provide proof of the employee's written authorization; and, he failed to show how he arrived at the valuations.[29]

Curiously, in the case at bench, the only valuations relied upon by the labor arbiter in his decision were figures furnished by the private respondent's own accountant, without corroborative evidence. On the pretext that records prior to the July 16, 1990 earthquake were lost or destroyed, respondent failed to produce payroll records, receipts and other relevant documents, where he could have, as has been pointed out in the Solicitor General's manifestation, "secured certified copies thereof from the nearest regional office of the Department of Labor, the SSS or the BIR." [30]

More significantly, the food and lodging, or the electricity and water consumed by the petitioner were not facilities but supplements. A benefit or privilege granted to an employee for the convenience of the employer is not a facility. The criterion in making a distinction between the two not so much lies in the kind (food, lodging) but the purpose.[31] Considering, therefore, that hotel workers are required to work different shifts and are expected to be available at various odd hours, their ready availability is a necessary matter in the operations of a small hotel, such as the private respondent's hotel.

It is therefore evident that petitioner is entitled to the payment of the deficiency in her wages equivalent to the full wage applicable from May 13, 1988 up to the date of her illegal dismissal.

Additionally, petitioner is entitled to payment of service incentive leave pay, emergency cost of living allowance, night differential pay, and 13th month pay for the periods alleged by the petitioner as the private respondent has never been able to adduce proof that petitioner was paid the aforesated benefits.

However, the claims covering the period of October 1987 up to the time of filing the case on May 13, 1988 are

barred by prescription as P.D. 442 (as amended) and its implementing rules limit all money claims arising out of employer-employee relationship to three (3) years from the time the cause of action accrues.[32]

We depart from the settled rule that an employee who is unjustly dismissed from work normally should be reinstated without loss of seniority rights and other privileges. Owing to the strained relations between petitioner and private respondent, allowing the former to return to her job would only subject her to possible harassment and future embarrassment. In the instant case, separation pay equivalent to one month's salary for every year of continuous service with the private respondent would be proper, starting with her job at the Belfront Hotel.

In addition to separation pay, backwages are in order. Pursuant to R.A. 6715 and our decision in *Osmalik Bustamante, et al. vs. National Labor Relations Commission*,[33] petitioner is entitled to full backwages from the time of her illegal dismissal up to the date of promulgation of this decision without qualification or deduction.

Finally, in dismissal cases, the law requires that the employer must furnish the employee sought to be terminated from employment with two written notices before the same may be legally effected. The first is a written notice containing a statement of the cause(s) for dismissal; the second is a notice informing the employee of the employer's decision to terminate him stating the basis of the dismissal. During the process leading to the second notice, the employer must give the employee ample opportunity to be heard and defend himself, with the assistance of counsel if he so desires.

Given the seriousness of the second cause (qualified theft) of the petitioner's dismissal, it is noteworthy that the private respondent never even bothered to inform petitioner of the charges against her. Neither was petitioner given the opportunity to explain the loss of the articles. It was only almost two months after petitioner had filed a complaint for illegal dismissal, as an afterthought, that the loss was reported to the police and added as a supplemental answer to petitioner's complaint. Clearly, the dismissal of petitioner without the benefit of notice and hearing prior to her termination violated her constitutional right to due process. Under the circumstances, an award of One Thousand Pesos (P1,000.00) on top of payment of the deficiency in wages and benefits for the period aforestated would be proper.

WHEREFORE, premises considered, the RESOLUTION of the National Labor Relations Commission dated April 24, 1994 is REVERSED and SET ASIDE, with costs. For clarity, the economic benefits due the petitioner are hereby summarized as follows:

- 1) Deficiency wages and the applicable ECOLA from May 13, 1988 up to the date of petitioner's illegal dismissal;
- 2) Service incentive leave pay; night differential pay and 13th month pay for the same period;
- 3) Separation pay equal to one month's salary for every year of petitioner's continuous service with the private respondent starting with her job at the Belfront Hotel;
- 4) Full backwages, without qualification or deduction, from the date of petitioner's illegal dismissal up to the date of promulgation of this decision pursuant to our ruling in *Bustamante vs. NLRC*. [34]
- 5) P1,000.00.

SO ORDERED.

Padilla, Bellosillo and Vitug, JJ., concur.

Hermosisima, Jr., J., on leave.

[1] Rollo, p. 5. Petitioner was employed by the private respondent originally at his Belfront Hotel but was later

pulled out for work at the Hotel Supreme, owned by the former.

[2] Id., at 6.

[3] Rollo, p. 6.

[4] Id., at 24.

[5] Rollo, p. 7.

[6] Id., at 31.

[7] Id., at 23-24.

[8] Rollo, p. 22.

[9] Id., at 24.

[10] Id., at 30-36.

[11] Ibid.

[12] Rollo, p. 4.

[13] Id., at 64-83.

[14] Polymedic General Hospital vs. NLRC, 134 SCRA 420, 424 (1985); Molave Tours Corporation vs. NLRC, 250 SCRA 325, 329 (1995).

[15] Rollo, p. 32.

[16] Dagupan Bus Co., Inc. vs. NLRC, 191 SCRA 328 (1990).

[17] Asphalt and Cement Pavers, Inc. vs. Leogardo, Jr., 162 SCRA 312 (1988).

[18] Flexo Manufacturing Corporation vs. NLRC, 135 SCRA 145 (1985).

[19] Rollo, p. 72.

[20] 193 SCRA 420, 426 (1991).

[21] Ibid.

[22] General Bank and Trust Co. vs. Court of Appeals, 135 SCRA 569, 578 (1985).

[23] Rollo, p. 73.

[24] Rollo, p. 78.

[25] Labor Code, art. 248 (f).

[26] Rollo, p. 26

[27] Labor Code, art. 97 (f).

[28] Rollo, p. 80.

[29] Ibid.

[30] Rollo, p. 80.

[31] *States Marine Corporation vs. Cebu Seamen's Association, Inc.*, 7 SCRA 294, 301 (1963).

[32] Omnibus Rules Implementing the Labor Code, Book VII, Rule II, sec. 1.

[33] G.R. No. 111651, November 28, 1996.

[34] *Ibid.*

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