

BREW MASTER INTERNATIONAL INC., PETITIONER, VS. NATIONAL FEDERATION OF LABOR UNIONS (NAFLU), ANTONIO D. ESTRADA AND HONORABLE NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISION...

G.R. No. 119243. April 17, 1997

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

This is a special civil action for certiorari seeking the reversal of the 7 October 1994 decision[1] of the National Labor Relations Commission (NLRC) in NLRC Case No. 00-06-04136-93 (CA No. L-007370-94), which modified the 11 July 1994 decision[2] of the Labor Arbiter by directing the reinstatement of private respondent Antonio D. Estrada, the complainant, without loss of seniority rights and benefits.

Private respondent National Federation of Labor Unions (NAFLU), a co-complainant in the labor case, is a labor union of which complainant is a member.

The factual and procedural antecedents are summarized in the decision of the Labor Arbiter which we quote verbatim:

Complainant was first employed by respondent on 16 September 1991 as route helper with the latest daily wage of P119.00. From 19 April 1993 up to 19 May 1993, for a period of one (1) month, complainant went on absent without permission (AWOP). On 20 May 1993, respondent thru Mr. Rodolfo Valentin, sent a Memo to complainant, to wit:

“Please explain in writing within 24 hours of your receipt of this memo why no disciplinary action should be taken against you for the following offense:

You were absent since April 19, 1993 up to May 19, 1993.

For your strict compliance.”

In answer to the aforesaid memo, complainant explained:

“Sa dahilan po na ako ay hindi nakapagpaalam sainyo [sic] dahil inuwi ko ang mga anak ko sa Samar dahil ang asawa ko ay lumayas at walang mag-aalaga sa mga anak ko. Kaya naman hindi ako naka long distance or telegrama dahil wala akong pera at ibinili ko ng gamot ay puro utang pa.”

Finding said explanation unsatisfactory, on 16 June 1993, respondent thru its Sales Manager, Mr. Henry A. Chongco issued a Notice of Termination which reads:

“We received your letter of explanation dated May 21, 1993 but we regret to inform you that we do not consider it valid. You are aware of the company Rules and Regulations that absence without permission for six (6) consecutive working days is considered abandonment of work.

In view of the foregoing, the company has decided to terminate your employment effective June 17, 1993 for abandonment of work.”

Hence, this complaint.

Complainants contend that individual complainant’s dismissal was done without just cause; that it was not sufficiently established that individual complainant’s absence from April 19, 1993 to June 16, 1993 are unjustified; that the penalty of dismissal for such violation is too severe; that in imposing such penalty, respondent should have taken into consideration complainant’s length of service and as a first offender, a penalty less punitive will suffice such as suspension for a definite period, (Position Paper, complainants).

Upon the other hand, respondent contends that individual complainant was dismissed for cause allowed by the company Rules and Regulations and the Labor Code; that the act of complainant in absenting from work for one (1) month without official leave is deleterious to the business of respondent; that it will result to stoppage of production which will not only destructive to respondent’s interests but also to the interest of its employees in general; that the dismissal of complainant from the service is legal, (Position Paper, respondent).[3]

The Labor Arbiter dismissed the complaint for lack of merit, citing the principle of managerial control, which recognizes the employer’s prerogative to prescribe reasonable rules and regulations to govern the conduct of his employees. The principle allows the imposition of disciplinary measures which are necessary for the efficiency of both the employer and the employees. In complainant’s case, he persisted in not reporting for work until 16 June 1993 notwithstanding his receipt of the memorandum requiring him to explain his absence without approval. The Labor Arbiter, relying on *Shoemart, Inc. vs. NLRC*,^[4] thus concluded:

Verily, it is crystal clear that individual complainant has indeed abandoned his work. The filing of the complaint on 25 June 1993 or almost two (2) months from the date complainant failed to report for work affirms the findings of this Office and therefore, under the law and jurisprudence which upholds the right of an employer to discharge an employee who incurs frequent, prolonged and unexplained absences as being grossly remiss in his duties to the employer and is therefore, dismissed for cause, (*Shoemart, Inc. vs. NLRC*, 176 SCRA 385). An employee is deemed to have abandoned his position or to have resigned from the same, whenever he has been absent therefrom without previous permission of the employer for three consecutive days or more. This justification is the obvious harm to employer’s interest, resulting from [sic] the non-availability of the worker’s services, (*Supra*). (underscoring supplied)[5]

and ruled that complainant’s termination from his employment was “legal, the same with just or authorized cause and due process.”[6]

Complainant appealed to the NLRC, alleging that the immediate filing of a complaint for illegal dismissal verily indicated that he never intended to abandon his work, then cited *Policarpio v. Vicente Dy Sun, Jr.*,^[7] where the NLRC ruled that prolonged absence does not, by itself, necessarily mean abandonment. Accordingly, there must be a concurrence of intention and overt acts from which it can be inferred that the employee is no longer interested in working. Complainant likewise invoked compassion in the application of sanctions, as dismissal from employment brings untold hardship and sorrows on the dependents of the wage earners. In his case, a penalty less punitive than dismissal could have sufficed.

In the assailed decision^[8] of 7 October 1994, the NLRC modified the Labor Arbiter’s decision and held that complainant’s dismissal was invalid for the following reasons:

Complainant-appellant’s prolonged absences, although unauthorized, may not amount to gross neglect or abandonment of work to warrant outright termination of employment. Dismissal is too severe a penalty. For one, the mere fact that complainant-appellant is a first offender must be considered in his favor. Besides, it is generally impossible for an employee to anticipate when he would be ill or compelled to attend to some family

problems or emergency like in the case at bar.

Reliance on the ruling enunciated in the cited case of *Shoemart Inc. vs. National Labor Relations*, 176 SCRA 385, is quite misplaced because of the obvious dissimilarities of the attendant circumstances in the said case vis-a-vis those obtaining in the case at bar. Unlike in the aforecited *Shoemart Case*, herein complainant-appellant was not dismissed for unauthorized absences and eventually reinstated anterior to his second dismissal for the same offense nor was he given a second chance which he could have ignored.

Otherwise stated, the difference between the two cases greatly lies [in] the fact that complainant in the *Shoemart Case* in the language of the Supreme Court was “an inveterate absentee who does not deserve reinstatement” compared to herein complainant-appellant who is a first offender”[9]

The NLRC then decreed as follows:

PREMISES CONSIDERED, and [sic] the Decision of the Labor Arbiter, dated 11 July 1994 is hereby MODIFIED, by directing the reinstatement of complainant-appellant to his former position without loss of seniority rights and other benefits, but without backwages. The other findings in the appealed decision stand AFFIRMED.[10]

Petitioner’s motion for the reconsideration[11] was denied by the NLRC in its 7 December 1994 resolution.[12] Petitioner thus filed this special civil action contending that the NLRC committed grave abuse of discretion in ordering complainant’s reinstatement, which in effect countenances the reinstatement of an employee who is found guilty of “excessive” absences without prior approval. It further argued that the NLRC failed to consider the rationale behind petitioner’s Rules and Regulations; that it was deprived of its prerogative to enforce them; and that complainant’s reinstatement would adversely affect its business and send the wrong signals to its employees.

In its comment[13] for public respondent NLRC, the Office of the Solicitor General maintained that dismissal from employment was too severe a penalty for a first time offender like complainant. Although he violated petitioner’s rules and regulations, his absences were justified: he had to bring his children to Samar, his home province, as his wife deserted him. While that by itself might not excuse the failure to seek permission, the Office of the Solicitor General submitted, however, that “it would be at [sic] the height of callousness if one, considering his plight under the circumstance[s], would not give due consideration to [complainant’s] explanation. There has to be an exception.”[14]

Applying *Itogon-Suyoc Mines, Inc. v. NLRC*,[15] the Office of the Solicitor General recommended complainant’s reinstatement, which would be more harmonious to the dictates of social justice and equity. It further emphasized that the reinstatement should not be considered a condonation of complainant’s irresponsible behavior, rather, it must be viewed as a mitigation of the severity of the penalty of dismissal. Accordingly, it prays that this petition be dismissed.

In its reply,[16] petitioner disputed the application of *Itogon-Suyoc* because: (1) the employee involved therein had been in the service for twenty-three years while complainant herein had served petitioner for only two years; and (2) the offense in *Itogon-Suyoc* was limited to a single act of high grading while complainant herein committed a series of unexcused absences.

We gave due course to the petition and dispensed with complainant’s comment.

The sole issue to be resolved is whether the NLRC committed grave abuse of discretion in modifying the decision of the Labor Arbiter.

The answer must be in the negative.

A scrutiny of the facts discloses that complainant's absence was precipitated by a grave family problem as his wife unexpectedly deserted him and abandoned the family. Considering that he had a full-time job, there was no one to whom he could entrust the children and he was thus compelled to bring them to the province. It would have been extremely difficult for him to have been husband and wife/father and mother at the same time to the children in the metropolis. He was then under emotional, psychological, spiritual and physical stress and strain. The reason for his absence is, under these circumstances, justified. While his failure to inform and seek petitioner's approval was an omission which must be corrected and chastised, he did not merit the severest penalty of dismissal from the service.

Petitioner's finding that complainant was guilty of abandonment is misplaced. Abandonment as a just and valid ground for dismissal requires the deliberate, unjustified refusal of the employee to resume his employment. Two elements must then be satisfied: (1) the failure to report for work or absence without valid or justifiable reason; and (2) a clear intention to sever the employer-employee relationship. The second element is the more determinative factor and must be evinced by overt acts.[17] Likewise, the burden of proof is on the employer to show the employee's clear and deliberate intent to discontinue his employment without any intention of returning,[18] mere absence is not sufficient.[19] These elements are not present here. First, as held above, complainant's absence was justified under the circumstances. As to the second requisite, we are not convinced that complainant ever intended to sever the employer-employee relationship. Complainant immediately complied with the memo requiring him to explain his absence, and upon knowledge of his termination, immediately sued for illegal dismissal. These plainly refuted any claim that he was no longer interested in returning to work.[20] Without doubt, the intention is lacking.

Moreover, petitioner failed to discharge the burden of proof that complainant was guilty of abandonment. No evidence other than complainant's letter explaining his absence was presented. Needless to state, the letter did not indicate, in the least, that complainant was no longer interested in returning to work. On the contrary, complainant sought petitioner's understanding. In declaring him guilty of abandonment, petitioner merely relied on its Rules and Regulations which limited its application to a six-day continuous absence, contrary to the purpose of the law. While the employer is not precluded from prescribing rules and regulations to govern the conduct of his employees, these rules and their implementation must be fair, just and reasonable. It must be underscored that no less than our Constitution looks with compassion on the workingman and protects his rights not only under a general statement of a state policy,[21] but under the Article on Social Justice and Human Rights,[22] thus placing labor contracts on a higher plane and with greater safeguards. Verily, relations between capital and labor are not merely contractual. They are impressed with public interest and labor contracts must, perforce, yield to the common good.[23]

We then conclude that complainant's "prolonged" absence without approval does not fall within the definition of abandonment and that his dismissal was unjustified. While we do not decide here the validity of petitioner's Rules and Regulations on continuous, unauthorized absences, what is plain is that it was wielded with undue haste resulting in a deprivation of due process, thus not allowing for a determination of just cause or abandonment. In this light, petitioner's dismissal was illegal. This is not to say that his absence should go unpunished, as impliedly noted by the NLRC in declining to award back wages. In the absence of the appropriate offense which defines complainant's infraction in the company's Rules and Regulations, equity dictates that a penalty commensurate to the infraction be imposed.

WHEREFORE, the petition is hereby DISMISSED and the decision of the National Labor Relations Commission in NLRC Case No. 06-04136-93 is hereby AFFIRMED. No pronouncement as to costs.
SO ORDERED.

Narvasa, C.J., (Chairman), Melo, Francisco, and Panganiban, JJ., concur.

[1] Annex “H” of Petition, Rollo, 48-53. Per Commissioner Ireneo Bernardo, with the concurrence of Presiding Commissioner Lourdes Javier and Commissioner Joaquin Tanodra.

[2] Annex “F” of Petition, Rollo, 38-44. Per Labor Arbiter Jovencio Mayor, Jr.

[3] Rollo, 38-40.

[4] 176 SCRA 385 [1989].

[5] Rollo, 43.

[6] Id., 43-44.

[7] NLRC Case No. R04-902074, 12 July 1976.

[8] Supra note 1.

[9] Rollo, 51-52.

[10] Rollo, 52-53.

[11] Id., 61-62.

[12] Id., 61-62.

[13] Rollo, 75-82.

[14] Rollo, 79-80.

[15] 117 SCRA 523 [1982]. We held therein: It would imply at the very least that where a penalty less than punitive would suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe. It is not only because of the laws’ concern for the workingman. There is, in addition, his family to consider. Unemployment brings untold hardships; and sorrows on those dependent on the wage-earner. The misery and pain attendant on the loss of jobs then could be avoided if there be acceptance of the view that under all the circumstances of this case, petitioners should not be deprived of their means of livelihood. Nor is this to condone what had been done by them. For all this while, since private respondent considered them separated from the service, they had not been paid. For the strictly juridical standpoint, it cannot be too strongly stressed ... that where a decision may be made to rest on informed judgment rather than rigid rules, all the equities of the case must be accorded their due weight. Finally, labor law determinations ... should be not only *secundum rationem* but also *secundum caritatem*. (at 529, quoting from *Meracap v. International Ceramics Mfg. Co., Inc.*, 92 SCRA 412, 417 [1979])

[16] Rollo, 87-90.

[17] *De Ysasi III v. NLRC*, 231 SCRA 173, 190 [1994]; *Labor v. NLRC*, 248 SCRA 183, 198 [1995].

[18] *F.R.F. Enterprises, Inc. v. NLRC*, 243 SCRA 593, 597 [1995]; *Reno Foods, Inc. v. NLRC*, 249 SCRA 379, 386 [1995].

[19] *Kingsize Manufacturing Corporation v. NLRC*, 238 SCRA 349, 354 [1994]; *F.R.F. Enterprises, Inc. v. NLRC*, supra note 18; *Labor v. NLRC*, supra note 17;

[20] See *Asphalt and Cement Pavers, Inc. v. Leogardo, Jr.*, 162 SCRA 312, 316-317 [1988]; *Santos v. NLRC*, 166 SCRA 759, 764-765 [1988]; *New Imus Lumber v. NLRC*, 221 SCRA 589, 594 [1993].

[21] Section 18, Article II.

[22] Section 3, Article XIII.

Article 1700, Civil Code.

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