

ANGELITO P. DELES, JR., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, FIRST PHIL. INDUSTRIAL CORP. AND/OR FLAVIANO C. SANTOS, RESPONDENTS*G.R. No. 121348. March 09, 2000*

Ponente: QUISUMBING, J.

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This special civil action for certiorari seeks to annul the decision promulgated on April 21, 1995, by public respondent in NLRC NCR Case No. 00-04-02733-93 and its resolution dated May 31, 1995 which denied petitioner's motion for reconsideration.

Respondent company operates a pipeline system which transports petroleum products from the refineries by Caltex (Phil.) Inc. and Shell (Phil.) Inc. in Batangas to terminal receiving facilities in Metro Manila. Petitioner was employed by respondent company as shift supervisor. He was assigned at its joint terminal facility in Pandacan, Manila, where he was the highest ranking officer at the terminal during his shift. His primary task was to oversee the entire pipeline operation in the terminal. Admittedly, he was a member of the management team.[1]

On the night of March 19, 1993, petitioner was the shift supervisor on duty while Eduardo Yumul and Leonardo Espejon were the assigned shift operator and gauger, respectively. During this shift, there was a scheduled delivery for Shell through respondent company's pipeline of about 3,000 barrels of kerosene (KE) to be followed by a delivery of aviation turbine fuel (AV). Forthwith, petitioner instructed his chief operator (Yumul) to effect a batch change[2] from the kerosene tank to the aviation fuel tank when the joint terminal facility turbine meter registers 2,944 barrels of kerosene delivered. Apparently, Yumul failed to execute correctly petitioner's order. Instead of effecting the batch change at the prescribed reading of 2,944 barrels, Yumul caused the batch change when the reading already reached 3,341 barrels. Thus, about 397 barrels of the succeeding batch of aviation turbine fuel went to the kerosene batch thereby downgrading the former.

When informed of the incident, respondent company required petitioner to explain why he should not be charged administratively for neglect of duty in view of his failure: (a) to witness the actual batch change cutting of S83-KE/S84-AV; (b) to see to it that a batch change checklist was prepared and followed, and; (c) to see to it that a batch change report was prepared. Concomitantly, petitioner was placed under preventive suspension pending the outcome of the investigation. Similarly, Yumul and Espejon were asked to explain for having been remiss in their duties.

On March 30, 1993, respondent company conducted a joint formal investigation of the cases of the three aforementioned personnel. The next day, respondent company found petitioner, Yumul and Espejon guilty as charged. Accordingly, private respondent Flaviano Santos, respondent company's assistant vice president, informed petitioner that he was found to have violated the section on Neglect of Duty of respondent company's Code of Discipline and for this violation he was meted the penalty of three (3) months suspension. For their part, Yumul was meted the penalty of dismissal while Espejon was suspended for one and a half months.

Believing that suspension for three months was too harsh, petitioner sought reconsideration of the penalty imposed. Subsequently, he filed a complaint before the NLRC, questioning the legality of his suspension.

While petitioner was under suspension, respondent company received reports that petitioner allowed the entry of two "bar girls" at the terminal at an unholy hour (4:00 A.M.) on February 23, 1993. This belied petitioner's previous claim that the two female visitors are his relatives. Thus, respondent company required petitioner to explain in writing why he should not be held liable for: (1) neglect of duty as he allowed unauthorized persons in a restricted area, and; (2) dishonesty as he misrepresented to management that the two women are his relatives. Unfortunately, petitioner failed to submit his written explanation. Nonetheless, respondent company conducted a formal inquiry on the matter which was attended by petitioner.

During the aforesaid proceeding, it was discovered that petitioner tampered with the automatic shutdown feature of Gravitometer No. 5 at the terminal on March 19, 1993. Likewise, respondent company learned that petitioner opened the terminal's motor operated valve (MOV # 10) between 6:00 A.M. and 6:35 A.M. on said date which caused the gravitation of the contents of Shell kerosene tank to aviation fuel tank.

The abovementioned gravitometer is equipped with a safety feature which triggers the automatic closure of the joint terminal facility pressure control valve which in turn cause a shutdown of the pipeline operations. It prevents the entry of liquefied petroleum gas (LPG) or a product mixture containing LPG, through the motor operated valve and onwards to the other product tanks such as gasoline, kerosene, jet fuel and diesel fuel. Hence, by disabling the automatic shutdown feature of said gravitometer, LPG could pass through the line to the gasoline tank undetected, and since the gasoline tank is not designed to accommodate LPG, the possibility of an explosion is enhanced.[3]

In view of these newly unearthed violations, respondent company again asked petitioner to explain why he should not be administratively sanctioned for: (1) tampering with an operating equipment (MOV#10), and; (2) tampering with the installation of a safety device of gravitometer. Consequently, petitioner was placed under preventive suspension effective June 24, 1993, pending the outcome of the probe on the latest charges against him. Meanwhile, on July 24, 1993, petitioner was reinstated in the payroll.[4]

After conducting formal investigation, respondent company terminated the employment of petitioner. The termination letter reads:

"We have meticulously reviewed your records with particular indulgence, especially the records of the investigation conducted by Management last July 23 and August 3, 1993 in connection with the reported tampering of the JTF Gravinometer No. 5 (GR-5) and the opening of the two (2) MOVs last March 19, 1993.

We were appalled by your admission during the aforesaid investigation that you tampered with the JTF Garavinometer No. 5 (GR-5) by taping the needle thereof to disable its shutdown feature.

By your admitted act, you had exposed JTF, the Pandacan installations of Caltex and Shell, and the adjacent communities to the danger of a major catastrophic tank explosions and untold loss of lives and unquantifiable damage to properties. ella

Certainly, your act is punishable under Section 7.10 of our Code of Employees Discipline.

This and your other violations and breach of existing policies/regulations concerning safety and other as well as your other established acts or omissions left us with no alternative but to terminate your services for loss of confidence effective September 14, 1993."[5]

Having been dismissed, petitioner amended his complaint by including the charge of illegal dismissal with a claim for unpaid wages.

In a decision[6] dated May 30, 1994, Labor Arbiter Potenciano Canizares, Jr., dismissed petitioner's complaint for lack of merit. On appeal, the NLRC upheld the labor arbiter's finding that petitioner's suspension for three months is a reasonable disciplinary measure. The labor tribunal also ruled that respondent company has sufficient basis to lose its trust and confidence on petitioner. However, it modified the decision of the labor arbiter by including therein an indemnity in an amount equivalent to petitioner's one month salary for alleged failure of herein respondent company to strictly comply with due process requirements prior to termination, thus:

"WHEREFORE, the Decision dated May 30, 1994 is hereby MODIFIED. Respondent is hereby directed to indemnify the petitioner the amount equivalent to his one (1) month salary or the amount of thirteen thousand three hundred [pesos] (P13,300.00) for failure to comply strictly with due process prior to termination." [7]

His motion for reconsideration having been denied, petitioner filed the instant petition, raising the following issues:

"I

WHETHER OR NOT THE PUBLIC RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION WHEN IT ACCEPTED AS TRUE, HOOK, LINE AND SINKER IN AFFIRMING THE DECISION OF THE LABOR ARBITER BASED ON THE BARE AND SELF-SERVING ALLEGATIONS OF THE PRIVATE RESPONDENT'S FPIC AND IN THRUSTING ASIDE THE ASSERTIONS, EVIDENCE, JURISPRUDENCE AND CONSTITUTIONAL MANDATES FAVORABLE TO THE PETITIONER.

II

WHETHER OR NOT PUBLIC RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION IN IGNORING THAT THE SEVERAL CUMULATIVE CHARGES BELATEDLY S [U]RFACED AFTER THE FILING OF ILLEGAL DISMISSAL CASE BY THE PETITIONER AGAINST THE RESPONDENT IS AN OBVIOUS INDICATION THAT THE SAME CAUGHT THE IRE OF THE PRIVATE RSPONDENT AND/OR APPARENT INSTANCE OF HARRASMENT.

III

WHETHER OR NOT THE PETITIONER WAS ILLEGALLY SUSPENDED AND DISMISSED." [8]

The issue for resolution now is whether or not public respondent committed grave abuse of discretion in affirming the decision of the labor arbiter finding that petitioner's suspension is legal and that his dismissal is for valid and just cause on account of loss of confidence.

First, regarding the legality of petitioner's suspension, we note that petitioner was found remiss in his duties in connection with the wrong batch change operation on March 19, 1993. He contends though that his suspension for three months is too harsh, whimsical and biased.[9] In essence, he decries the penalty imposed on him which he considered too severe.

However, petitioner loses sight of the fact that the right of an employer to regulate all aspects of employment is well settled. This right, aptly called management prerogative, gives employers the freedom to regulate, according to their discretion and best judgment, all aspects of employment, including work assignment, working methods, processes to be followed, working regulations, transfer of employees, work supervision, lay-off of workers and the discipline, dismissal and recall of workers.[10] In general, management has the prerogative to discipline its employees and to impose appropriate penalties on erring workers pursuant to company rules and regulations. Thus, we find petitioner's protestation unfounded. For, based on the record, respondent company imposed said penalty pursuant to the Company Code of Discipline which the labor agencies find to be fair and in accordance with law. In fact, the penalty for violating the provision on Neglect of Duty ranges from warning to dismissal depending on the gravity of the offense.[11] Respondent company explained that mishandling the delivery of highly flammable petroleum products could result in enormous damage to properties and loss of lives at the

terminal and surrounding areas. Hence, it has to exercise extraordinary diligence in conducting its operations in view of the delicate nature of its business. Considering the attendant circumstances, we are constrained to agree that the penalty of suspension first imposed on petitioner is reasonable and appropriate as well as legally unassailable.

Next, petitioner challenges the legality of his dismissal from the service. He insists that respondent company has no ground to lose trust and confidence on him to justify his dismissal. He vehemently denies tampering with the gravimeter, much less admitting doing it. He also avers that it is inconceivable for him to do so since he was with his co-workers, Noel Valle and Edgardo Yumul, at the time of said incident. Further, he claims that there is no reason for him to commit such transgression.[12]

On its face, petitioner's contention would require the Court to delve into the findings of fact *a quo*. This we cannot do. In the review of NLRC decisions through a special civil action for certiorari, we are confined only to issues of want of jurisdiction and grave abuse of discretion on the part of the labor tribunal. We are precluded from inquiring unto the correctness of the evaluation of that evidence that underpins the labor tribunal's conclusion on matters of fact. Nor could we re-examine the evidence, re-evaluate the credibility of the witnesses, nor substitute our findings of fact for those of an administrative body which has the authority and expertise in its specialized field. Arguably, there may even be an error in judgment. This however is not within the ambit of the extraordinary remedy of certiorari.[13]

Nevertheless, in this case, we note that the labor arbiter used every reasonable means to ascertain the facts by giving the parties ample opportunity to present evidence. After both parties were heard, they filed their respective affidavits, position papers and memoranda. In our view, the labor arbiter properly found that despite considering these documentary evidence, averments of Flaviano Santos in his affidavit indicting petitioner for tampering with the gravimeter and admitting the wrongdoing[14] stand on solid ground. Further, petitioner did not quite succeed to convince the respondent NLRC to rule otherwise.

Now, it must be emphasized that loss of trust and confidence constitutes a valid ground for dismissing an employee. As provided for in the Labor Code: "ART. 282. Termination by employer.- An employer may terminate an employment for any of the following causes: xxx (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative. xxx" Of course, it must be stressed also that loss of confidence as a just cause for termination of employment is premised on the fact that an employee concerned holds a position of trust and confidence. This situation holds where an employee or official of the company is entrusted with responsibility involving delicate matters, such as the custody, handling, or care and protection of the employer's property. In the case of company personnel occupying such positions of responsibility, the Court has repeatedly held that loss of trust and confidence justifies termination.[15]

As regards a managerial employee, moreover, mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal. Proof beyond reasonable doubt is not required, it being sufficient that there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded by his position.[16]

In the case at bar, petitioner, is tasked to perform key functions; he is bound by an exacting work ethic. He should have realized that his position requires the full trust and confidence of his employer in every exercise of managerial discretion insofar as the conduct of his employer's business is concerned. However, as found *a quo*, he committed acts which betrayed the trust and confidence reposed on him by tampering with very sensitive equipment at the joint terminal facility. In doing so, he exposed the terminal complex and the residents in adjacent

communities to the danger of a major disaster that may be caused by tank explosions and conflagration. Verily, he committed acts inimical to the interest of his employer which is mandated by law to observe extraordinary diligence in its operations to ensure the safety of the public. Indeed, we are constrained to conclude that petitioner's admitted infraction as well his past violation of safety regulations is more than sufficient ground for respondent company to terminate the employment of petitioner.

In sum, public respondent NLRC could not be faulted for any grave abuse of discretion in ruling that petitioner's suspension is legal and his dismissal well justified on the ground of loss of trust and confidence.

As regards the procedural aspect of petitioner's dismissal, it appears clear to us that petitioner was given ample opportunity to present his side and to defend himself against the charges against him. Respondent company sent petitioner a letter dated June 2, 1993, requiring him to answer the charges hurled against him. He participated in the formal investigation conducted by respondent company on July 23 and August 3, 1993. After the investigation was concluded, petitioner was notified of his dismissal. Under these attendant circumstances, we find no basis for public respondent's ruling that respondent company breached legal procedure prior to termination. Consequently, the award of indemnity for non-observance of due process is bereft of legal basis and must be deleted.

WHEREFORE, the instant petition is DENIED for lack of merit. The assailed decision of public respondent NLRC, which upheld the Labor Arbiter's decision dismissing petitioner's complaint, is AFFIRMED with the MODIFICATION that the award of indemnity in the amount equivalent to petitioner's one (1) month salary is DELETED. No pronouncement as to costs.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1] Rollo, p. 81.

[2] A pipeline operation to separate two adjacent oil products passing through the pipeline to the respective storage tanks in the terminal facility.

[3] Rollo, pp. 91-92.

[4] Id. at 54.

[5] Id. at 55.

[6] Id. at 96-105.

[7] Id. at 119.

[8] Id. at 22.

[9] Id. at 23.

[10] *Tierra Int'l. Construction Corp. vs. NLRC*, 256 SCRA 36, 42 (1996).

[11] Rollo, p. 67.

[12] Id. at 418-420.

[13] *Jardine Davies, Inc. vs. NLRC*, G.R.-76272, July 28, 1999, p. 5.

[14] Id. at 99.

[15] *Caoile vs. NLRC*, 299 SCRA 76, 82 (1998).

[16] *Supra*, at 83.

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