

ALA MODE GARMENTS, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, (FIRST DIVISION) LUCRECIA V. GABA AND ELSA I. MELARPES, RESPONDENTS.

G.R. No. 122165. February 17, 1997

Ponente: HERMOSISIMA, JR., J.

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HERMOSISIMA, JR., J.:

Before us is a petition for certiorari seeking to annul and set aside the Resolutions[1] of the National Labor Relations Commission (NLRC.) dated November 24, 1994 and June 26, 1995 in an illegal dismissal case.[2]

The following facts are not disputed:

Petitioner is a garments manufacturer and exporter. Private respondents were both employees of petitioner until May 7, 1993 when, upon reporting for work, private respondents were disallowed from entering petitioner's premises.

Private respondents were first hired as sewers. They were, in time, promoted to the position of line leaders, each tasked with supervising thirty-six (36) sewers.

On May 5 and 6, 1993, all the line leaders in petitioner's establishment did not report for work. Acting on what appeared to be a concerted action to boycott petitioner's operations, petitioner verbally required private respondents to submit written explanations as to their absence.

On May 7, 1993, private respondents were not allowed to enter the premises of petitioner.

On May 10, 1993, both private respondents tendered their explanation letters to petitioner. Private respondent Gaba's letter states, thus:

"5-10-93

Dear Sir:

Ipagpaumanhin ninyo ang hindi ko pagpapasok ngayon dahil ang anak ko po ay dadalhin ko sa Doctor at baka po dalawan (sic) araw akong hindi makakapasok dahil po sa aking anak na (_____) ay naloloko sa kaya (sic) barkada kaya aking inaasikaso pa.

Sana po ay ako ay maunawaan ninyo.

Lubos na Gumagalang,

(Sgd)

Lucrecia"

On the other hand, private respondent Melarpes gave the following reason for her absence in her letter:

"May 10, 1993

Dear Sir:

Ipagpaumanhin ninyo ang pag-absent ko noong May 5-6, 1993 dahil masakit ang pos-on ko at may dalang nag-tatai at nagsusuka, at sorry po kung hindi ako nakapadala nang sulat o kaya tumawag sa telephone.

Aasahan ko po ang inyong consideration.

Respectfully yours,

(Sgd)

Elsa Melarpes"

Thus, private respondent Gaba was absent on May 5 and 6, 1993 because her child was sick, while private respondent Melarpes was also absent because she was ill on said dates due to her pregnancy.

Notwithstanding the submission by private respondents of their explanation letters, they were not allowed to resume their work. Petitioner alleged that it advised private respondents to await the decision of management, pending a company investigation as to whether or not the real reason for their absence was an intent to sabotage the operations of petitioner.

Significantly, however, petitioner never denied that the other line leaders who were also absent on May 5 and 6, 1993, had been immediately allowed to resume their work despite their two-day absence.

On May 17, 1993, private respondents filed with the NLRC separate complaints for, among others, illegal dismissal.

After submission of position papers, replies and rejoinders, the Labor Arbiter rendered a Decision dated April 25, 1994 finding that private respondents were illegally dismissed from service on the mere suspicion that their two-day absence was actually a boycott to derail the operations of petitioner. The Labor Arbiter held that such suspicion was utterly unsupported by any evidence. The Labor Arbiter also found that private respondents' right to due process was violated in the absence of compliance by petitioner with the twin requirements of notice and hearing. The Labor Arbiter ruled, thus:

"Well-settled is the rule that in termination cases, the employer has the burden of proof to show that the dismissal was for cause. Failure in this regard, renders the dismissal unjustified and therefore, illegal (*Gesulgon vs. NLRC*, 219 SCRA 561). In the case at bar, except for respondent's bare allegation that complainants sabotage[d] its business operations which resulted in huge losses, no evidence was adduced to support its contention. Neither did respondent submitted [sic] proof that the company indeed incurred losses as a result of complainants' concerted action. Decisions could not be based on mere conjectures or surmises but must be supported by evidence.

Furthermore, records are bereft of any showing that complainants were indeed afforded the due process requirement of the law. What complainants submitted were letters-explanations regarding their absence but not with respect to the charge of sabotage as alleged by respondent. s

Moreover, granting *arguendo*, that complainants violated the company rules and regulations for having been absent without prior approval by the management, still the penalty of dismissal is too severe a penalty, considering that this is the first offense/infraction committed by them during their three (3) years of service with the company.

All told, complainants were indeed dismissed from the service without cause and due process. As such, they should be reinstated to their former positions without loss of seniority rights with backwages not exceeding three (3) years x x x"[3]

Understandably, petitioner appealed the aforecited decision of the Labor Arbiter to respondent NLRC. Such appeal, however, was dismissed on November 24, 1994.

Before respondent NLRC; petitioner advanced the theory that it could not be liable for illegal dismissal, since private respondents have not been in fact dismissed from the service. Petitioner complained that after having told private respondents to wait for the decision of management, private respondents "jumped the gun" on them, so to speak, by filing the complaint for illegal dismissal. Respondent NLRC, however, was the least persuaded; it ruled:

"With the record clearly showing that complainants were able to satisfactorily explain their absences with valid reasons, and that they actually presented themselves for work on May 7, 1993, except that they were not accepted back by respondent, we cannot but affirm the decision below." [4]

Petitioner filed a Motion for Reconsideration of the aforecited decision, but respondent NLRC denied the same in a Resolution dated June 26, 1995 for having been filed out of time. Hence, this petition.

Petitioner raises the following as grounds justifying the nullification of the herein assailed resolutions of respondent NLRC:

A. THE NLRC GRAVELY ABUSED ITS DISCRETION WHEN IT RULED THAT PRIVATE RESPONDENTS WERE DISMISSED BY PETITIONER WHEN THE EVIDENCE ON RECORD SHOWS THAT PRIVATE RESPONDENTS WERE SIMPLY INSTRUCTED TO AWAIT MANAGEMENT'S DECISION REGARDING THE PENDING ADMINISTRATIVE INVESTIGATION.

B. PETITIONER HAD REASONABLE GROUND TO CONCLUDE THAT PRIVATE RESPONDENTS' FAILURE TO REPORT FOR WORK WAS A FORM OF CONCERTED ACTION DESIGNED TO SABOTAGE ITS OPERATIONS. THE NLRC GRAVELY ABUSED ITS DISCRETION WHEN IT RULED OTHERWISE.

C. THE NLRC GRAVELY ABUSED ITS DISCRETION WHEN IT CONCLUDED THAT DISMISSAL WAS TOO SEVERE A PENALTY FOR PRIVATE RESPONDENTS' INFRACTIONS. PRIVATE RESPONDENTS WERE GUILTY OF SABOTAGING THE OPERATIONS OF PETITIONER. HENCE, THE PENALTY OF DISMISSAL IS COMMENSURATE TO THE INFRACTIONS COMMITTED BY PRIVATE RESPONDENTS.

D. THE NLRC GRAVELY ABUSED ITS DISCRETION IN CONCLUDING THAT PETITIONER FAILED TO OBSERVE THE REQUIREMENTS OF DUE PROCESS.

E. THE NLRC GRAVELY ABUSED ITS DISCRETION IN HOLDING PETITIONER LIABLE FOR BACKWAGES, HOLIDAY PAY, SERVICE INCENTIVE LEAVE PAY, AND ATTORNEY'S FEES WHEN ITS FINDING OF ILLEGAL DISMISSAL IS NOT EVEN SUBSTANTIATED BY EVIDENCE.

The petition fails to convince us that respondent NLRC is guilty of grave abuse of discretion.

The crux of petitioner's argument is that it cannot be held guilty of illegal dismissal because there was no dismissal effected in the first place. This claim is belied by the fact, undisputed by the petitioner, that private respondents were barred from entering the work premises while the other line leaders supposedly part of the boycott were allowed to return to work. The failure of the petitioner to accept the private respondents back after their absences constitutes constructive discharge or dismissal. A constructive discharge or dismissal is defined as a "quitting because continued employment is rendered impossible, unreasonable or unlikely; as an offer involving a demotion in rank and a diminution in pay." Private respondents herein found it well nigh impossible to continue their employment, having been denied access into their workplace. The case of *Valiant Machinery and Metal Corp. vs. NLRC*, [5] wherein this Court found the employer guilty of illegal dismissal when it did not allow its

workers to enter the company premises finds application to the situation at hand. As held therein:

"The Court finds substantial evidence in support of the ruling of the NLRC that the private respondents were indeed dismissed without cause. While there was no outright or open termination of the services of the employees, there is reason to believe the company barred them from work because they were absent practically for one week when they were badly needed in the factory."

Finding that there was, indeed, a dismissal, We hold that the same was made without compliance with the requirements laid down by law and jurisprudence. In order to constitute a valid dismissal, two requisites must concur: (a) the dismissal must be for any of the causes expressed in Art. 282 of the Labor Code, and (b) the employee must be accorded due process, basic of which are the opportunity to be heard and to defend himself.[6] Herein, the Labor Arbiter found that records are bereft of any showing that private respondents were indeed afforded the due process requirement of the law. What private respondents submitted were letters-explanations regarding their absences but not with respect to the charge of sabotage as alleged by petitioner.[7]

Petitioner claims that the private respondents were only made to wait for the decision of the management pending investigation of the alleged "sabotage" or boycott. It will be noted, however, that the private respondents were already barred from entering the company as early as May 7, 1993. They filed their complaint on May 17 of the same year. Ten days had lapsed before the said complaints were filed. Within those ten days the private respondents were not allowed to work in the company and their status remained unclear. As aptly noted by the Solicitor General:

"Even assuming ex gratia argumenti that there was a company investigation being then conducted, still petitioner should not have ordered private respondents to await its decision on the matter but instead imposed on the latter preventive suspension in conformity with Sections 3 and 4 of Rule XIV of Book V of the Implementing Rules of the Labor Code, considering that private respondents were accused of having sabotaged petitioner's operations which resulted in business losses, a clear example of a serious and imminent, if not actual, threats to petitioner's property. Hence, having been placed in suspended animation, so to speak, by petitioner, private respondents had every reason to believe that they were dismissed by the former, as they actually were, thereby warranting the filing of the complaints for illegal dismissal."[8]

The private respondents were never summoned by the management to air their side regarding the accusations of sabotage, but were only required to give explanations regarding their absences. Thus, even if, as petitioner claims, that the dismissal was due to the role played by the respondents in the alleged sabotage, the said dismissal is still invalid, as no notice was given and no hearing was conducted. To reiterate, the twin requirements of notice and hearing constitute essential elements of due process in the dismissal of employees.[9]

Moreover, the petitioner is inconsistent in its arguments. While contending that private respondents were not dismissed, it goes on to state that dismissal in this instance is valid as petitioner had "reasonable ground to suspect that the absences were a form of concerted action." [10] It also insists that private respondent Inocencio's absence due to abdominal pains, accompanied by loose bowel movement and vomiting, to be flimsy at best, despite the fact that said private respondent submitted a medical certificate to substantiate her claim.[11]

On the contrary, as noted by the Solicitor General, the Labor Arbiter gave credence and weight to the justification given by private respondents for their two-day absence as consistent with the truth, against petitioner's mere conjecture that the absences were a form of sabotage. Well entrenched is the rule that when the conclusions of the labor arbiter are sufficiently corroborated by the evidence on record, the same should be respected by appellate tribunals since he is in a better position to assess and evaluate the credibility of the contending parties.[12] If ever there is anything that may be considered flimsy in this case, it should be the petitioner's lame justification for the dismissal of the private respondents. As succinctly put by the NLRC:

"Absent any proof that complainants (private respondents in this case) actually initiated what it termed a concerted action of its line leaders to sabotage its business operations by absenting themselves all at the same time on May 5 and 6, 1993, the respondent (herein petitioner) cannot just invoke sabotage that does not exist. Besides, what makes it difficult for respondent to charge complainants of illegal strike, if such existed? That it miserably failed to show that there were other line leaders (aside from complainants) who were likewise absent on said dates, we cannot but consign this defense to the 'dustbin' of afterthoughts"[13]

We come now to the petitioner's claim that the NLRC gravely abused its discretion in holding it liable for backwages, holiday pay, service Incentive leave pay, and attorney's fees. Other than the award for backwages, this Court finds no reason why the petitioner should not be made so liable. As noted by the Labor Arbiter, and affirmed by respondent NLRC, petitioner failed to show proof that the holiday pay and service incentive leave pay had been paid. Having been also compelled to litigate, the award of attorney's fees equivalent to five percent (5%) of the total judgment award is also proper.[14]We find no reason to disturb said findings.

Anent the issue of backwages, We find that the Labor Arbiter erred in limiting the award of back wages for only a period not exceeding three (3) years. Prior to the effectivity of Republic Act No. 6715, the rule was that an employee, who was illegally dismissed, was entitled to an award of backwages equivalent to three years (where his case is not terminated sooner).[15]Republic Act No. 6715, which amended Art. 279 of the Labor Code took effect on March 21, 1989. It states in part:

"ART. 279. Security of Tenure. — . . . An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages inclusive of allowances and to his other benefits or their monetary equivalent computed from the time his compensation is withheld from him up to the time of his actual reinstatement." (emphasis ours)

Private respondents' cause of action against the petitioner arose on May 7, 1993, their complaint for illegal dismissal was filed on May 17, 1993. Since the dismissal took place after the passage of such law, and following the doctrine laid down in the case of *Caltex Refinery Employees Association (CREA) vs. National Labor Relations Commission (Third Division)*,^[16] We hold that the private respondents are entitled to reinstatement without loss of seniority rights, as well as to other privileges and their full backwages inclusive of allowances, and to their other benefits or their monetary equivalent computed from the time their compensation was withheld from them up to the time of their actual reinstatement. Moreover, no deduction shall be allowed in accordance with the doctrine enunciated in the recent case of *Bustamante vs. National Labor Relations Commission and Evergreen Farms, Inc.*^[17] wherein this Court took the opportunity to clarify how Republic Act No. 6715 is to be interpreted:

"The Court deems it appropriate, however, to reconsider such earlier ruling on the computation of backwages as enunciated in said *Pines City Educational Center* case, by now holding that conformably with the evident legislative intent as expressed in Rep. Act No. 6715, x x x backwages to be awarded to an illegally dismissed employee, should not, as a general rule, be diminished or reduced by the earnings derived by him during the period of his illegal dismissal. The underlying reason for this ruling is that the employee, while litigating the legality ([or] illegality) of his dismissal, must still earn a living to support himself and family, while full backwages have to be paid by the employer as part of the price or penalty he has to pay for illegally dismissing his employee. The clear legislative intent of the amendment in Rep. Act No. 6715 is to give more benefits to workers than was previously given them under the *Mercury Drug* rule or the 'deduction of earnings elsewhere' rule. Thus, a closer adherence to the legislative policy behind Rep. Act No. 6715 points to 'full backwages' as meaning exactly that, i.e., without deducting from backwages the earnings derived elsewhere by the concerned employee during the period of his illegal dismissal. In other words, the provision calling for 'full backwages' to illegally dismissed employees is clear, plain and free from ambiguity, and, therefore, must be applied without attempted or strained interpretation. *Index animi sermo est.*"

Should reinstatement no longer be feasible due to strained relations, the award of separation pay equivalent to one (1) month salary for every year of service, a fraction of six (6) months to be considered as one (1) year.

WHEREFORE, the, Petition is hereby DISMISSED, and the Resolution of the National Labor Relations Commission dated November 24, 1994 is AFFIRMED with MODIFICATION that the award of backwages or separation pay be computed according to the foregoing discussion.

Costs against the Petitioners.

SO ORDERED.

Padilla, (Chairman), Bellosillo, Vitug, and Kapunan, JJ., concur.

[1] Decision dated November 24, 1994, Rollo, pp. 26-33 and Resolution dated June 26, 1995, Rollo, pp. 22-25.

[2] Docketed as NLRC NCR Case No. 00-05-03380-93.

[3] Decision of Labor Arbiter Fatima Jambaro-Franco dated April 25, 1994, pp. 3-4, Rollo, pp. 58-59

[4] Decision of the NLRC penned by Commissioner Vicente S. E. Veloso with Commissioners Bartolome S. Carale and Alberto R Quimpo concurring dated November 24, 1994, p. 7, Rollo, p. 32.

[5] 252 SCRA 369 (January 25, 1996).

[6] Oania v. NLRC, 244 SCRA 668 (June 1, 1995).

[7] Decision of the Labor Arbiter dated April 25, 1994, p. 3, Rollo p. 58.

[8] Comment filed by the Solicitor General, dated August 26, 1996, pp. 15-16, Rollo, pp. 120-121.

[9] Marcelo v. NLRC, 240 SCRA 782 (January 31, 1995).

[10] Rollo, p. 14.

[11] Rollo, p. 50.

[12] Philippine Telegraph and Telephone Corporation vs. National Labor Relations Commission, 183 SCRA 451 (March 21, 1990).

[13] Rollo, p. 32.

[14] Decision of Labor Arbiter Fatima Jambaro-Franco dated April 25, 1994, p. 4-5, Rollo, pp. 59-60.

[15] Balladares, Jr. vs. National Labor Relations Commission, 245 SCRA 213, (June 19, 1995).

[16] 246 SCRA 271 (July 14, 1995).

[17] G. R. No. 111651 (November 28, 1996).

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