

DANILO DIMABAYAO, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, ISLAND BISCUIT INC. AND CHENG SUY EH, RESPONDENTS.

G.R. No. 122178. February 25, 1999

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

DANILO DIMABAYAO seeks to set aside through this petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure the 15 March 1995 Decision and 23 June 1995 Resolution of the National Labor Relations Commission (NLRC) which modified the Decision of the Labor Arbiter finding private respondents guilty of having illegally dismissed petitioner from their employ.

Private respondent Island Biscuit, Inc., is engaged in the manufacture of biscuits with private respondent Cheng Suy Eh as its General Manager. On 5 April 1983 it employed petitioner with the specific task of operating the roller, cutting biscuits, sorting out rejects, mashing flour and feeding the flour mass into its thinning machine.

On 30 July 1992, while petitioner was assigned to sort out rejects, with prior permission first obtained from his checker, he went to the comfort room to answer the call of nature and relieve himself, after which he returned to his work place. But private respondent Cheng Suy Eh was unhappy seeing petitioner away from his work station and immediately demanded from him a written explanation allegedly for abandoning his work. As a matter of policy, respondent company discourages its employees from going to the comfort room during working hours for sanitary or hygienic purposes as the company is engaged in the food business.[1]

The following day, 31 July 1992, Marcela Lok, respondent company's Personnel Manager, handed petitioner a letter asking him to explain in writing why he left his work station on 17 and 30 July 1992. Petitioner verbally explained that he never left his station on 17 July while on 30 July he only went to the comfort room for a short while to answer the call of nature.[2] Believing that this denial was enough he did not anymore submit any written explanation. But, for his inability to submit a written explanation, petitioner was suspended for fifteen (15) days which he contested before the Arbitration Branch of the NLRC.

On 20 October 1992 petitioner requested a fellow worker to replace him in his work station so he could go to the comfort room to relieve himself. Again private respondent Cheng Suy Eh noticed petitioner's brief absence and so, upon his return, his manager berated him again and required him to submit once more a written explanation for allegedly abandoning his work. Petitioner complied.

Finding petitioner's explanation not satisfactory, respondent company through its Personnel Officer Marcela Lok served petitioner a notice of termination.

Petitioner thereafter amended his complaint before the NLRC to include illegal dismissal among his causes of action in view of his termination from the service.

On 21 September 1994 the Labor Arbiter declared the suspension of petitioner valid and legal not because he left

his production area to relieve himself but for his utter disregard of the directive of the manager to submit his written explanation. His dismissal however was found illegal, but because of the strained relationship between the parties, the Labor Arbiter further held that reinstatement was no longer feasible and thereafter awarded petitioner a limited back wages for six (6) months without reinstatement. Thus private respondents were in addition required to pay petitioner service incentive leave pay of P615.00, proportionate thirteenth month pay of P2,132.00, separation pay of P14,391.00, and 10% attorney's fees of P3,632.60.[3]

On 15 March 1995 the NLRC reversed the decision of the Labor Arbiter but sustained the grant of separation pay as a measure of compassion taking into consideration petitioner's length of service in the company,[4] and on 23 June 1995 denied petitioner's motion for reconsideration.

The crucial issue to be resolved is whether the NLRC acted with grave abuse of discretion in upholding the legality of petitioner's dismissal.

As the NLRC decision itself indicates, the dismissal of petitioner was based on Art. 282 (a) and (b) of the Labor Code which provides:

Art. 282. Termination by employer. - An employer may terminate an employment for any of the following causes: (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work; (b) Gross and habitual neglect by the employer of his duties.

As early as *Batangas Laguna Tayabas Bus Company v. Court of Appeals*,^[5] and recently, in *Gold City Integrated Port Services, Inc. v. National Labor Relations Commission*,^[6] we ruled that:

Willful disobedience of the employer's lawful orders, as a just cause for dismissal of an employee envisages the concurrence of at least two requisites: (1) the employee's assailed conduct must have been willful being characterized by a 'wrongful and perverse attitude;' and (2) the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge.

The assailed NLRC decision^[7] held -

Complainant's termination was certainly for a valid cause. He violated for several times the company rules which prohibit the leaving of one's post during working hours and without proper authorization. Complainant was a habitual violator of company regulations. As can be gleaned from the attached Annexes, he had been involved in a fist fight with a co-employee; he had been negligent in the performance of his work by mixing the dough of one product; he had threatened and sent away his co-workers who still were at work; he had refused to comply with the instructions of a checker, etc. The complainant made it a habit to leave his post during working hours and without prior authorization. The explanation of complainant for his last offense was that he had to answer the call of nature. But complainant had all the chance to visit the comfort room. He enjoyed two fifteen minutes coffee breaks and one hour meal time. Before complainant was terminated, respondents had already forewarned him of his termination if he still committed the offense which caused his suspension. Complainant therefore knew that respondents could no longer allow a repetition of his offense. Still, complainant left his post during working hours last October 20, 1992. He virtually provoked respondents into terminating him.

In light of our ruling in *Gold City Integrated Port Services*^[8] we cannot sustain the NLRC for upholding private respondents' dismissal of petitioner. Petitioner's act of leaving his work place to relieve himself can hardly be characterized as abandonment, much less a willful or intentional disobedience of company rules since he was merely answering the call of nature over which he had no control. Restraining one's bowel movement can result in great discomfort and affect adversely the efficiency, and even the health, of the worker.^[9] Petitioner's disobedience to his employer's orders can easily be categorized as trivial and unimportant, and as such, does not merit a penalty as harsh as dismissal.

Likewise, there was no gross and habitual neglect of his duties by petitioner since he merely relieved himself which, as already adverted to, could not have constituted abandonment of work. Neither could it have disrupted the operations of the company as to cause it irreparable damage. Witnesses testified during the hearing before the Arbitration Branch of the NLRC that petitioner was absent from his work station only for a few minutes and that on 20 October 1992 he even took the initiative of asking his co-worker to take over his post before proceeding to the latrine.[10] The violation of petitioner, if at all it was, could not be that serious as to warrant his dismissal from the service. As explained by the Labor Arbiter[11]-

While it may be true that complainant has been leaving his work area without permission, this Arbitration Board finds that complainant's habit of going to the toilet in the morning during production is merely a call of nature and by force of habit he had to relieve himself. Whether or not the complainant relieved himself is not the issue. The call of nature is a reasonable reason for him to leave his work area. Although complainant is not entirely without fault since he has been leaving his workplace without permission from his supervisor and his disrespect towards his superiors as borne out by the reports of his supervisor and guards, the infraction committed by the complainant is not so grave that would warrant the ultimate penalty of dismissal.

The Labor Arbiter, in effect, opined that a grave injustice would be committed against the employee if the penalty imposed was grossly disproportionate to the wrong he committed.[12] At most, a 7-day suspension without pay - for not asking permission from his supervisor before answering a call of nature, if that be considered an infraction at all! - should have been sufficient penalty for petitioner.

The NLRC also endeavored to justify its decision by taking into account offenses allegedly committed by petitioner way back in 1990. These offenses as enumerated in the NLRC decision were infractions imputed to petitioner prior to the 17 July, 30 July and 20 October 1992 incidents. As such, they should have been outrightly ignored by the NLRC in determining and upholding the validity of petitioner's dismissal since, as may be gleaned from the termination letter, petitioner's dismissal was based merely on the 17 July, 30 July and 20 October 1992 alleged incidents, without reference to any infraction committed before then. This only shows that the offenses attributed to petitioner before 17 July 1992 were mere afterthoughts conceived in the course of the trial to further justify his dismissal. To refer to those alleged earlier violations as further grounds for dismissal is undoubtedly prejudicial to petitioner. Significantly, it would also be doubly prejudicial to him to penalize him for those committed on 17 and 30 July 1992 as he was already suspended for fifteen (15) days for those infractions. This, obviously, denied petitioner procedural due process and deprived him of his right to be heard, to refute and present evidence to controvert such accusations prior to his actual dismissal from employment.

As a consequence, petitioner is entitled to reinstatement.[13] The postulate advanced by the Labor Arbiter that there existed "strained relationship" between the parties, thus barring reinstatement of petitioner, does not hold water. Strained relationship may be invoked only against employees whose positions demand trust and confidence, or whose differences with their employer are of such nature or degree as to preclude reinstatement. In the instant case, however, the relationship between petitioner, an ordinary employee, and management was clearly on an impersonal level. Petitioner did not occupy such a sensitive position as would require complete trust and confidence, and where personal ill will would foreclose his reinstatement.[14] But, interestingly, petitioner himself was praying for his reinstatement.

WHEREFORE, the petition for certiorari is GRANTED and the 15 March 1995 Decision and the 23 June 1995 Resolution of the National Labor Relations Commission are SET ASIDE. The 21 September 1994 Decision of the Labor Arbiter is REINSTATED subject to the modification that petitioner DANILO DIMABAYAO be immediately reinstated to his former or equivalent position without loss of seniority and other rights, awarded back wages from the time of his dismissal to the time of actual reinstatement, as well as attorney's fees of 10% of

the total monetary awards.

SO ORDERED.

Puno, Mendoza, Quisumbing and Buena, JJ., concur.

[1] Affidavit of Marcela M. Lok, Personnel Officer of the Island Biscuits, Inc.; Original Records, p. 163.

[2] Rollo, pp. 150-151.

[3] Decision penned by Labor Arbiter Pablo C. Espiritu, Jr.; Original Records, p. 178.

[4] Decision penned by Commissioner Victoriano R. Calaycay with the concurrence of Presiding Commissioner Raul T. Aquino; Rollo, p. 27.

[5] No. L-38482, 11 June 1976, 71 SCRA 811.

[6] G.R. No. 92859, 1 February 1993, 189 SCRA 811.

[7] See Note 4; Rollo, p. 34.

[8] See Note 6.

[9] Rollo, p. 155.

[10] Id., p. 153.

[11] Original Records, p. 176.

[12] *Hongkong and Shanghai Banking Corp. v. National Labor Relations Commission*, G.R. No. 116542, 30 July 1996, 260 SCRA 49.

[13] Art. 279. Security of tenure. - In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. 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 was withheld from him up to the time of his actual reinstatement.

[14] *Maranaw Hotels and Resorts Corp. v. Court of Appeals*, G.R. No. 103215, 6 November 1992, 215 SCRA 501.

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