

GREENHILLS PRODUCTS, INC. AND/OR JESSIE YU, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND BUENAVENTURA F. ABAJO, RESPONDENTS.

G.R. No. 123950. February 27, 1998

Ponente: ROMERO, J.

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ROMERO, J.:

This petition for certiorari assails the resolution of the National Labor Relations Commission (NLRC) dated October 24, 1995, setting aside the Labor Arbiter's decision and its resolution denying petitioner's motion for reconsideration.

From August 1985 up to his dismissal on September 1988, private respondent Buenaventura F. Abajo was employed by petitioner Greenhills Products Inc. (GPI), a company engaged in the manufacture and export of rattan furnitures, as a laborer assigned at its Bending Department.

Sometime in June 1988, he was allegedly offered by one Ruben Godornes, petitioner's Assistant Production/Preparation Manager, to be the president of a union which the company intended to organize which the former, however, refused. At the time, the existing collective bargaining agreement between petitioner and the then bargaining agent Nagkakaisang Lakas ng Manggagawa was about to expire. During the 60-day freedom period from August 14 to October 14, 1988, respondent actively campaigned for the recognition of the Association of Labor Union (ALU) of which he was the local president.

On September 3, 1988, respondent was summoned to appear before company owner and manager Jessie Yu's office to explain his unyielding stand to their offer. When respondent argued that the proposed union could not guarantee his members their security of tenure, Yu was infuriated and thereupon directed the latter to withdraw his membership with ALU which order was, however, disobeyed. In view of his unrelenting refusal, his services were terminated. He was made to sign a memorandum dated September 3, 1988, effecting his immediate severance therefrom, on grounds that his honesty, sincerity and loyalty to the company has become suspect.

Petitioner, on the other hand, recounted that respondent was initially assigned at its Bending Department. Claiming that his performance was lackluster and that he has become a problem employee in view of his tardiness, he was transferred to the Parts Preparation Department where he allegedly continue to perform inefficiently. As penalty therefore, he was assigned as a stockman.

On June 30, 1988, Godornes conducted an inventory of company properties and he reported that several furniture parts and samples entrusted to respondent were found missing. When confronted with the missing properties, the latter allegedly promised to produce them, but that due to the pressing production schedule, Godornes simply forgot all about the incident.

Sometime in July 1988, a certain Roberto Caramelo inquired from Josephine Angbetic, petitioner's purchaser of rattan poles, whether he could secure additional rattan furniture parts and samples which he previously bought

from respondent. Yu immediately inquired from Godornes about the alleged missing furniture parts and samples. Forthwith, Godornes confronted respondent about the same and of his previous promise to surrender them. The latter was allegedly stunned and refused to comment on its loss, prompting the former to report the matter to Yu. For loss of trust and confidence, respondent was therefore dismissed from employment.

In a complaint for illegal dismissal and unfair labor practice against petitioner, Labor Arbiter Dominador A. Almirante rendered a decision dated December 7, 1993, the decretal portion of which reads:

“Wherefore, foregoing premises considered, judgment is hereby rendered ordering the dismissal of this case for lack of merit. Respondent Greenhills Products, Inc. is, however, hereby ordered to pay complainant Buenaventura F. Abajo the amount of P1,000.00 by way of indemnity.

SO ORDERED.”[1]

The judgment was, however, reversed on appeal by the NLRC in its decision dated October 24, 1995, decreeing in this wise:

“WHEREFORE, for all the foregoing, the appealed decision is hereby REVERSED, SET ASIDE and VACATED, and a new one entered:

(1) declaring the respondent Greenhills Products, Inc. and/or Jessie Yu guilty of unfair labor practice;

(2) declaring the dismissal of complainant Buenaventura F. Abajo illegal and awarding in his favor three (3) years backwages from September 3, 1988 to September 3, 1991 in the amount of P90,438.92, separation pay in lieu of reinstatement which is no longer practical, realistic or advantageous to both parties in view of their antagonism, equivalent to one month pay for every year of service including the three (3) years imputed service for which backwages have been awarded all in the total amount of P16,485.00.

(3) ordering respondents to pay to complainant, in addition to the foregoing, attorney’s fees of 10% of the total award or the amount of P10,692.39.

All other claims are hereby DISMISSED for lack of basis.

SO ORDERED.”[2]

Petitioner has failed to advance any compelling reason to overturn the decision of the NLRC.

It is settled that in termination cases, the employer bears the burden of proving that the dismissal is for just cause failing which would mean that the dismissal is not justified and the employee is entitled to reinstatement.[3] The essence of due process in administrative proceedings is the opportunity to explain one’s side or a chance to seek reconsideration of the action or ruling complained of.[4] In *Samillano v. NLRC*, [5] the Court held that proper compliance with the twin requirements of notice and hearing are conditions sine qua non before a dismissal may be validly effected, and any procedural shortcut that effectively allows an employer to assume the roles of both accuser and judge at the same time should not be countenanced. Thus, the employer must furnish the worker with two (2) written notices before termination of employment can be legally effected: (a) notice which apprises the employee of the particular acts or omissions for which his dismissal is sought, and (b) the subsequent notice which informs the employee of the employer’s decision to dismiss him.[6] In the instant case, petitioner failed, not only to show cause for the alleged loss of confidence, but disregarded procedural and substantive due process as well.

In the case at bar, respondent was not furnished with either of the two written notices required by law. This finding is buttressed by the Labor Arbiter’s decision which petitioner, surprisingly, seeks to restore. Thus:

“We find, however, that complainant was not accorded adequate due process before dismissal. It is true he was

issued memoranda to explain his side. According to respondent complainant refused to sign receipt of a copy thereof and failed to make an explanation. To complainant, he failed to receive any copy of such memoranda. Indeed there is no proof that complainant did receive them. Respondent should have sent them by registered mail with return card or other means by which evidence of service can be proven. Be that as it may, however, the supposed investigation on September 3, 1988 (page 4 of respondent's position paper) is not the kind of investigation that would suffice to comply with the procedural requirement. Firstly, there was no evidence that he was represented by counsel or a union representative. All the persons named therein were personnel and officers of respondent. There was no evidence adduced that there was an actual hearing conducted where complainant was given the opportunity to be heard and defend himself. The best evidence would have been the minutes of the proceedings of the alleged investigation. Parenthetically, it is the result of the supposed investigation that precipitated complainant's dismissal on the same day September 3, 1988." [7]

On the contrary, there is nothing in the records which would warrant the termination of respondent from his employment. As amply expounded by the NLRC:

"His transfer from one kind of work to another from the bending department to parts preparation department and from a piece rate to a daily rate status, and later as stockman is too far an indication of a poor performance. If one appears to be inefficient in ordinary course of things or under human experience, he should remain a piece rate worker because conversion to a daily rate basis would be incongruous to management goal for higher productivity and profits. Besides, the task at the bending department appears to be much easier and less complicated than that in the parts preparation department and significantly the complainant's transfer to a lighter and convenient job as stockman though with the same rate as when he was in the parts preparation department is in a way a promotion and an appreciation of satisfactory services rendered.

We likewise find less convincing or unbelievable the acts of dishonesty imputed to the complainant in allegedly selling furniture parts and samples to a certain Roberto Carmelo amounting to P8,000.00. First, the lost or missing furniture parts and samples have not been sufficiently established by evidence on record. Assuming in the remote possibility that some furniture parts were really lost or missing, there is no evidence on record to establish or pinpoint that the complainant was responsible for the said losses, except the general allegation of the respondent that the furniture parts stored in the stockroom are entrusted to the complainant. It is unrefuted on record that aside from the complainant, there were other stockmen in the framing department and no investigation was conducted to find out who among the three (3) could be held responsible for the losses if indeed such were incurred.

Above all, there is no doubt that furniture parts stored in the stockroom could be brought out only upon proper documentation or could not be brought out without being intercepted by the security guard always posted at least at respondents' only ingress to or egress from its premises. It would be too naive to believe the theory that the complainant bore a hole at the roof top through which the missing parts were spirited away. As we note, no hearing was conducted at which the complainant will be afforded ample opportunity to defend himself against those serious accusations. At most, the alleged purchaser of the supposed lost or missing furniture parts and the hole at the roof top could be a part of the ploy or plot of the respondents to cover up or justify the complainant's termination from employment on the account of his union activities. To repeat, the requirement that the dismissal of an employee due to loss of trust and confidence must be based on reasonable basis and supported by substantial evidence has not been met in the instant case." (NLRC Decision, pp. 12-14; Underscoring supplied).

The guidelines for the doctrine of loss of confidence to apply are: (1) loss of confidence should not be simulated; (2) it should not be used as a subterfuge for causes which are improper, illegal, or unjustified; (3) it may not be arbitrarily asserted in the face of overwhelming evidence to the contrary; and (4) it must be genuine, not a mere afterthought to justify an earlier action taken in bad faith.[8] Petitioner contended that respondent's dismissal was for a valid cause arguing that the latter stole company properties and, thereafter, disposed of them for a

consideration in favor of Roberto Caramelo.

Petitioner's arguments are not persuasive since these must be read in light of the circumstances prevailing at the time the matter in dispute occurred. Notably, during the 60-day freedom period, respondent was actively campaigning to have ALU as their next bargaining representative. Conceivably, his efforts earned the ire of management which looked askance at ALU as a "troublemaker." When respondent opted to stay with ALU, petitioner dismissed him on trumped-up charges.

The award, however, of attorney's fees by the NLRC must be deleted for lack of legal and factual basis. "The matter of attorney's fees cannot be touched upon only in the dispositive portion of the decision - the text itself must state the reasons why attorney's fees are being awarded. As the decision of the NLRC in this case, as in the instant petition, states no basis for the award of attorney's fees, such award should be deleted." [9]

WHEREFORE, the decision of the National Labor Relations Commission dated October 24, 1995 is AFFIRMED subject to the deletion of the award of P10,692.39 as attorney's fees for want of legal and factual basis. No costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Kapunan, and Purisima, JJ., concur.

[1] Rollo, p. 68.

[2] Rollo, pp. 47-48.

[3] PLDT v. NLRC, G.R. No. 111933, July 23, 1997, citing *Molave Tours Corporation v. NLRC*, 250 SCRA 325 (1995).

[4] *Pizza Hut v. NLRC*, 252 SCRA 531 (1996).

[5] 265 SCRA 788 (1996).

[6] *Stolt-Nielsen Marine Services (Phils.) v. NLRC*, 264 SCRA 307 (1996).

[7] Rollo, p. 67.

[8] *Midas Touch Food Corporation v. NLRC*, 259 SCRA 652 (1996).

[9] *Valiant Machinery and Metal Corporation v. NLRC*, 252 SCRA 379 (1996); *Development Bank of the Philippines v. Court of Appeals*, 262 SCRA 245 (1996).

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