BENGUET CORPORATION, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND FELIZARDO A. GUIANAN, RESPONDENT.

G.R. No. 124166. November 16, 1999

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

On grave abuse of discretion amounting to lack or excess of jurisdiction BENGUET CORPORATION assails the Decision of public respondent National Labor Relations Commission (NLRC) for declaring, in complete disregard of petitioner's evidence, that private respondent was illegally dismissed.[1]

Private respondent Felizardo A. Guianan started working with BENGUET way back in 1963 as a "bodegero" in its Ungay-Malobago Project in Rapu-Rapu, Albay. Sometime in 1966 he was transferred to the company's Negros Sulphur Project in Taytay, Negros Oriental. He was later promoted to supervisor. In 1973 he was again transferred to Masinloc Chromite Operation (MCO) in Coto, Masinloc, Zambales, where he served in various capacities - from assistant warehouse supervisor to manager of the Materials Group - until his termination in 1983.

In June 1983 BENGUET allegedly received an anonymous letter imputing, among others, "extensive graft and corruption, dishonest and poor management practices at the MCO involving materials which had been costing the company millions of pesos."[2] The writer implicated private respondent Guianan as one of the alleged perpetrators of the anomalies but cautiously stated that he/she had, as yet, no proof or evidence to substantiate the accusations.

BENGUET constituted an audit committee to verify the allegations in the anonymous letter. Based on its initial findings, the committee reported that a substantial number of purchased spare parts withdrawn from the warehouse was either secondhand, defective and/or off-specification although there was no proof to support the claim that high-valued parts previously disposed of were being purchased. Pending further investigation, Guianan was preventively suspended together with two (2) other MCO managers.

In a letter dated 5 August 1983 BENGUET informed Guianan of his termination from employment effective 7 August 1983 for breach of trust and confidence of the company due to gross negligence and misconduct. An investigating committee conducted a formal inquiry and finding private respondent's explanations unsatisfactory, he was formally dismissed on 9 November 1983. Two (2) other managers involved in the alleged anomaly were similarly dismissed.

Sometime in March 1984 BENGUET initiated a criminal case for estafa against Guianan before the Office of the Provincial Fiscal of Zambales but the case was dismissed after preliminary investigation. BENGUET appealed the case to the Department of Justice by way of petition for review but it was likewise dismissed.

On 9 October 1986 Guianan filed a complaint for illegal dismissal, illegal suspension, reinstatement and damages against BENGUET before the Regional Arbitration Branch III. For failure of private respondent to attend several

conferences the case was dismissed without prejudice on 30 June 1988.

On 13 January 1989 the complaint was revived before the Office of Labor Arbiter Ricardo C. Nora. In his decision dated 30 July 1992 the Labor Arbiter found that Guianan was not given due process when he was immediately discharged merely on the basis of an anonymous letter; that he was investigated twenty-two (22) days after dismissal probably as an afterthought; and was again served with his termination papers for the second time on 9 November 1983. The dismissal of Guianan, in the opinion of the Labor Arbiter, was illegal because it was pre-planned, premeditated and smacked of utter bad faith. Moreover, there was no showing that he had a hand in the purchase of the off-specification materials since his principal functions were confined to merely the requisitioning of spare parts as ordered by the end-user departments. In other words, the anomalies imputed to him could not be ascribed to him but to the end-user departments.[3]

Ruling out reinstatement because of Guianan's age - he was already fifty-nine (59) in 1989 - the Labor Arbiter ordered BENGUET to pay private respondent P300,000.00 as separation pay and P540,000.00 as back wages for three (3) years. BENGUET was also ordered to pay the dismissed employee P250,000.00 as moral damages, P125,000.00 as exemplary damages plus P121,500.00 for attorney's fees.

On appeal the NLRC held that while it concurred with the finding of the Labor Arbiter that Guianan was illegally dismissed it modified the appealed decision by deleting the awards for moral and exemplary damages and attorney's fees.[4]

BENGUET now comes to this Court assailing the Decision of the NLRC on the ground that it completely disregarded the evidence when it ruled that the dismissal of Guianan was illegal.

We are not inclined to arrive at a different conclusion. Findings of fact of quasi-judicial agencies like the NLRC are generally accorded not only respect but at times finality if such are supported by substantial evidence.[5] As found by the Labor Arbiter, Guianan was dismissed on the basis of an anonymous letter. He was not given any opportunity to confront the charges mentioned therein prior to his dismissal.[6] In a letter dated 5 August 1983[7] he was informed by BENGUET through AVP Amado Lagdameo that effective 7 August 1983 his employment was being terminated.

On 29 August 1983, i.e., twenty-two (22) days after, an investigating committee conducted a probe on the matter resulting in the finding that private respondent was responsible for the anomalies adverted to in the anonymous letter. Consequently, he was once again dismissed on 9 November 1983. The composition of the fact-finding committee, twenty-two (22) days after Guianan was first terminated, was obviously an afterthought to give a semblance of compliance with the 30-day notice requirement provided by law. It was merely a token gesture to cure the obviously defective earlier dismissal on 7 August.[8] The termination of Guianan was tinged with bad faith on the part of BENGUET. Our laws as well as this Court have consistently recognized and respected an employer's right to terminate the services of an employee for a just or authorized cause but this prerogative must be exercised in good faith.[9]

Private respondent Guianan was dismissed for alleged lack of trust and confidence because of his gross negligence and misconduct in the purchase at exorbitant prices of useless off-specification and secondhand spare parts received at the warehouse, later withdrawn, and thereafter scattered and left for junk in several places in the mine site.[10] In a gargantuan establishment such as herein petitioner, it is well nigh impossible to repose on a single individual such a herculean task as what petitioner seems to be suggesting. The Labor Arbiter convincingly explained in his decision the principal functions of private respondent thus[11] -

> It appears that as the Manager in charge of materials at respondent's MCO, the principal functions of the complainant were confined to merely requisitioning of spare parts and materials as ordered by the end-user

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> departments. The department under the complainant maintains and carries a total of 127,000 line items of spare parts and other materials. Save for the items usually carried in the warehouse at MCO in Coto, Masinloc, Zambales, complainant initiates requisitions only when so requested by the end-user departments but the actual purchase of said materials and spare parts are (sic) done by another department- the Purchasing Department - based in respondent company's Head Office situated in Makati, Metro Manila. Complainant has no hand in the canvassing of prices as well as in the actual purchases thereof as these functions are reposed in the Purchasing Department of respondent company.

He further elucidated that -

> During trial, the eight (8) pictures were presented to show that eight (8) line items were received by the Materials department under complainant which were off-specifications. The pictures, by the way, were not duly identified by the photographer, nor was the time and place of the taking thereof identified, only spoke of eight (8) line items. It is uncontroverted, however, that there were more than 127,000 of such line items being carried and maintained at the complainant's department. Each of these line items is composed of thousands upon thousands of small and big parts which make it reasonable to provide allowance or margin for human error. Error, in our view, in about eight (8) line items would be reasonably ascribed to innocent human error. Furthermore, there was no proof adduced that complainant ever profited from the transaction when these off-specification materials were purchased or delivered to his department. The off-specification materials described and depicted in the pictures were still in the company warehouse even up to the time when complainant's services were terminated. And neither was there evidence shown that the same, for being off-specification, has no more use to the company.

Needless to say, the conclusions of the Labor Arbiter sufficiently corroborated by the evidence on record must be accorded great respect considering that he was in a better position to assess and evaluate the credibility of the parties. As testified to by BENGUET's witnesses, periodic audits on the Materials Department were conducted by internal and external auditors from 1979 to 1983 when the anomalies were supposedly committed. But the audits yielded negative results.[12]

One could only wonder how the perpetrators of these alleged anomalies were able to go on with their nefarious deeds undetected for a number of years. The alleged damage incurred by BENGUET as a result of the reported irregularities were never confirmed by the SGV auditing firm nor by any independent and disinterested auditor. As correctly pointed out by the Labor Arbiter -

> Based on the above-described uncontroverted procedure, we find and so hold that the anomalies alleged to have been committed by the complainant which principally consisted of and involved the act of purchasing of alleged off-specification materials and spare parts as well as the act of actually requisitioning thereof which are requested and made not by the complainant but by the end-user departments, were not anomalies that may be ascribed to complainant. At most, the anomalies adduced were committed by some other persons - either in the purchasing department or in the end-user departments - but not by complainant.[13]

While it is true that loss of trust and confidence is a just cause for termination, it must not be simulated or concocted but must be supported by substantial evidence. In termination cases, the burden of proof of a just and valid cause for dismissing the employee rests upon the employer, and the latter's failure to do so inevitably results in a finding that the dismissal is unjustified.[14] Private respondent had risen from the ranks - from a mere "bodegero" in 1963 to manager of Materials Department which position he held until his arbitrary dismissal in 1983 - an enviable feat indeed considering that his educational background was minimal. He relied solely on his unswerving loyalty to the company and dedication to his work to climb the often tortuous and perilous corporate ladder. He was the recipient of numerous awards, commendations and promotions from BENGUET which he had served for two (2) decades. In his entire service to the company he was never implicated in any irregularity or

anomaly; on the contrary, his colleagues had consistently recognized his excellent performance. To be dismissed with precipitate haste and uncorroborated imputations is an act of serious ingratitude to a man who had spent the most productive years of his life in the pursuit of the company's goals.

Private respondent was illegally dismissed in 1983, i.e., prior to the effectivity of RA 6715 on 21 March 1989. Therefore, in consonance with the Mercury Drug rule,[15] which was the doctrine applicable prior to RA 6715, the award of back wages shall be limited to three (3) years from the date of termination. Again while reinstatement is a relief mandated in illegal dismissal, the same cannot be awarded in instances where it is no longer feasible as in this case where private respondent is already over-aged. Therefore, separation pay in lieu of reinstatement may be awarded.

WHEREFORE, the assailed Decision of public respondent National Labor Relations Commission ordering petitioner Benguet Corporation to pay private respondent Felizardo A. Guianan back wages in the amount of P540,000.00 or the equivalent of his three (3)-year salary and separation pay in the amount of P300,000.00 or the equivalent of his twenty (20) months salary computed at one month salary for every year of service, is AFFIRMED.

SO ORDERED.

Mendoza, Quisumbing, Buena, and De Leon, Jr., JJ., concur.

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[1] Petition for Certiorari under Rule 65 of the Revised Rules of Court.

[2] Annex "B," Position Paper dated 12 January 1989 submitted by Benguet Corporation to the Labor Arbiter; Original Records, NOR B-23-A, p. 114.

[3] Rollo, pp. 31-54.

[4] NLRC Decision dated 27 February 1985; Rollo, pp. 55-70.

[5] Five J. Taxi v. NLRC, G.R. No. 111474, 22 August 1994, 235 SCRA 556.

[6] Rollo, p. 37.

[7] Annex D, Petitioner's Position Paper; Original Records (NOR B-23-A), p. 125.

[8] Rollo, p. 168.

[9] Samar II Electric Cooperative, Inc. v. NLRC, G.R. No. 116692, 21 March 1997, 270 SCRA 290.

[10] Rollo, p. 4.10

[11] Decision by Labor Arbiter Ricardo Nora, 30 July 1992.

[12] Rollo, pp. 212-213.

[13] See Note 12, pp. 13-14.

[14] Trendline Employees Association-Southern Philippines Federation of Labor v. NLRC, G.R. No. 112923, 5 May 1997, 272 SCRA 172.

[15] Bustamante v. NLRC, G. R. No. 111651, 28 November 1996, 265 SCRA 68. Under PD 442, it became mandatory to award back wages to illegally dismissed regular employees. This law specifically declared that the award of back wages was to be computed from the time the compensation was withheld from the employee up to

the time of his reinstatement. This notwithstanding, the rule generally applied by the Court after the promulgation of the Mercury Drug case, and during the effectivity of PD 442, was still the Mercury Drug rule. In sum, during the effectivity of PD 442, the Court enforced the Mercury Drug rule and in effect qualified the provision under PD 442 by limiting the award of back wages to three (3) years. See Mercury Drug v. CIR, No. L-23357, 30 April 1974, 56 SCRA 694.

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