PERMEX INC. AND/OR JANE (JEAN) PUNZALAN, PERSONNEL MANAGER AND EDGAR LIM, MANAGER, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND EMMANUEL FILOTEO, RESPONDENTS.

G.R. No. 125031. January 24, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This special civil action for certiorari impugns the Resolution of the National Labor Relations Commission, Fifth Division, dated March 14, 1996, which reversed the decision of the Labor Arbiter in NLRC Case No. RAB-09-09-00259-94, as well as its Resolution, dated April 17, 1996, denying the motion for reconsideration.

Petitioner, Permex Producer and Exporter Corporation (hereinafter Permex), is a company engaged in the business of canning tuna and sardines, both for export and domestic consumption. Its office and factory are both located in Zamboanga City.

Co-petitioners Edgar Lim and Jean Punzalan[1] are its Manager and Personnel Manager, respectively.

Private respondent Emmanuel Filoteo, an employee of Permex, was terminated by petitioners allegedly for flagrantly and deliberately violating company rules and regulations. More specifically, he was dismissed allegedly for falsifying his daily time record.

The pertinent facts, as found by both the NLRC and the Labor Arbiter, are as follows:

Permex initially hired Emmanuel Filoteo on October 1, 1990, as a mechanic. Eventually, Filoteo was promoted to water treatment operator, a position he held until his termination on August 29, 1994. As water treatment operator, Filoteo did not have a fixed working schedule. His hours of work were dependent upon the company's shifting production schedules.

On July 31, 1994, Filoteo was scheduled for the night shift from 7:00 p.m. to 7:00 a.m. the following day. That night he reported for work together with his co-workers, Felix Pelayo and Manuel Manzan. They logged in at the main gate and guardhouse of the petitioner's factory. Filoteo entered his time-in at 8:45 p.m. and since he was scheduled to work until 7:00 a.m. the next day, he wrote 7:00 a.m. in his scheduled time-out. This practice of indicating the time out at the moment they time in, was customarily done by most workers for convenience and practicality since at the end of their work shift, they were often tired and in a hurry to catch the available service vehicle for their trip home, so they often forgot to log out. There were times also when the Log Book was brought to the Office of the Personnel Manager and they could not enter their time out. The company had tolerated the practice.

On the evening of July 31,1994, at around 9:20 p.m., Filoteo, together with Pelayo, went to see the Assistant Production Manager to inquire if "butchering" of fish would be done that evening so they could start operating the

boiler. They were advised to wait from 9:30 p.m. to 10:00 p.m. for confirmation.

At or about 10:00 p.m., Filoteo and Pelayo went back to the Assistant Production Manager's office. There they were informed that there would be no "butchering" of tuna that night. Filoteo then sought permission to go home, which was granted. Filoteo then hurriedly got his things and dashed off to the exit gate to catch the service jeep provided by Permex.

The next day, August 1, 1994, Filoteo reported for work as usual. He then remembered that he had to make a re-entry in his daily time record for the previous day. He proceeded to the Office of the Personnel Manager to retime his DTR entry. Later, he received a memorandum from the Assistant Personnel Officer asking him to explain, in writing, the entry he made in his DTR. Filoteo complied and submitted his written explanation that same evening. Sdaamiso

On August 8, 1994, Filoteo was suspended indefinitely. His explanation was found unsatisfactory. He was dismissed from employment on August 23, 1994.

The dismissal arose from Filoteo's alleged violation of Article 2 of the company rules and regulations. The offense charged was entering in his DTR that he had worked from 8:45 p.m. of July 31, 1994 to 7:00 a.m. of August 1,1994, when in fact he had worked only up to 10:00 p.m.

On September 5, 1994, Filoteo filed a complaint for illegal dismissal with claims for separation pay, damages, and attorney's fees with the Labor Arbiter. His complaint was docketed as NLRC Case No. RAB 09-09-00259-94.

On June 9, 1995, the Labor Arbiter dismissed the complaint for lack of merit. The decretal portion of the decision reads:

> "WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered dismissing the complaint for lack of merit. However, for violation of compliance of (sic) procedural due process, the respondent is hereby ordered thru its Authorized Officer to pay complainant P1,000.00 by way of indemnity pay. Furthermore, complainant's claims for damages and attorney's fees be dismissed for lack of merit.
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> "SO ORDERED."[2]

Filoteo appealed to the NLRC. Finding merit therein, the Commission's Fifth Division promulgated its resolution, reversing and setting aside the Labor Arbiter's decision, by disposing as follows:

> "WHEREFORE, the decision appealed from, is Vacated and Set Aside and a new one entered declaring the complainant to have been illegally dismissed by respondent company. Accordingly, respondent Permex, Inc., through its corporate officers, is hereby ordered and directed to pay complainant, Emmanuel Filoteo, separation pay at the rate of one (1) month salary for every year of service or in the equivalent of four (4) months separation pay and backwages effective August 23, 1994 up to the promulgation of this decision, inclusive of fringe benefits, if any. Further, respondent company is ordered to pay complainant moral and exemplary damages in the sum of P10,000.00 and P5,000.00, respectively, as well as attorney's fees equivalent to ten (10%) percent of the total monetary award after computation thereof at the execution stage.
>
> "SO ORDERED."[3]

On April 3, 1996, petitioners filed a motion for reconsideration. It was denied for lack of merit by the NLRC in a resolution dated April 17, 1996.

Hence, the present petition, assigning the following errors:

> I

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> PUBLIC RESPONDENT'S RESOLUTIONS ARE CONTRARY TO THE EVIDENCE ON RECORD AND ADMITTED FACTS.
>
> II
>
> PUBLIC RESPONDENT ERRED WHEN IT RULED THAT PRIVATE RESPONDENT WAS ILLEGALLY DISMISSED.
>
> III
>
> PUBLIC RESPONDENT ERRED WHEN IT AWARDED PRIVATE RESPONDENT SEPARATION PAY, BACKWAGES, DAMAGES AND ATTORNEY'S FEES SANS FACTUAL AND LEGAL BASIS.

We will now consider these assigned errors to resolve the principal issue of whether or not private respondent was illegally terminated from his employment.

Note that, firstly, petitioners seek a reversal of the public respondent's findings of the facts. But as the Court has repeatedly ruled the findings of facts of the NLRC, particularly where the NLRC and the Labor Arbiter are in agreement, are deemed binding and conclusive upon the Court.[4] For the Court is not a trier of facts.[5] Second, resort to judicial review of the decisions of the NLRC in a special civil action for certiorari under Rule 65 of the Rules of Court, is limited only to the question generally of grave abuse of discretion amounting to lack or excess of jurisdiction.[6] Thirdly, in this case, the NLRC's factual findings are supported by the evidence on record. We are therefore constrained not to disturb said findings of fact.

Whether private respondent was illegally dismissed or not is governed by Article 282 of the Labor Code.[7] To constitute a valid dismissal from employment, two requisites must concur: (a) the dismissal must be for any of the causes provided for in Article 282 of the Labor Code; and (b) the employee must be afforded an opportunity to be heard and defend himself.[8] This means that an employer can terminate the services of an employee for just and valid causes, which must be supported by clear and convincing evidence.[9] It also means that, procedurally, the employee must be given notice, with adequate opportunity to be heard,[10] before he is notified of his actual dismissal for cause.

In the present case, the NLRC found that the two-fold requirements for a valid dismissal were not satisfied by the petitioners.

First, petitioner's charge of serious misconduct of falsification or deliberate misrepresentation was not supported by the evidence on the record contrary to Art. 277 of the Labor Code which provides that:

> "Art. 277. Miscellaneous provisions. -
>
> x x x
>
> (b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause...The burden of proving that the termination was for a valid or authorized cause shall rest on the employer..."

Second, the private respondent was not afforded an opportunity to be heard. As found by the NLRC:

> "... Aside from the fact that there was no valid and justifiable cause for his outright dismissal from the service, complainant's dismissal as correctly held by the Labor Arbiter was tainted with arbitrariness for failure of respondent company (petitioner herein) to observe procedural due process in effecting his dismissal. Admittedly, complainant was suspended indefinitely on August 8, 1994 and subsequently dismissed on August 23, 1994 without any formal investigation to enable complainant to defend himself."[11]

Such dismissal, in our view, was too harsh a penalty for an unintentional infraction, not to mention that it was his first offense committed without malice, and committed also by others who were not equally penalized.[12]

It is clear that the alleged false entry in private respondent's DTR was actually the result of having logged his scheduled time-out in advance on July 31, 1994. But it appears that when he timed in, he had no idea that his work schedule (night shift) would be cancelled. When it was confirmed at 10:00 p.m. that there was no "butchering" of tuna to be done, those who reported for work were allowed to go home, including private respondent. In fact, Filoteo even obtained permission to leave from the Assistant Production Manager.

Considering the factory practice which management tolerated, we are persuaded that Filoteo, in his rush to catch the service vehicle, merely forgot to correct his initial time-out entry. Nothing is shown to prove he deliberately falsified his daily time record to deceive the company. The NLRC found that even management's own evidence reflected that a certain Felix Pelayo, a co-worker of private respondent, was also allowed to go home that night and like private respondent logged in advance 7:00 a.m. as his time-out. This supports Filoteo's claim that it was common practice among night-shift workers to log in their usual time-out in advance in the daily time record.

Moreover, as early as Tide Water Associated Oil Co. v. Victory Employees and Laborers' Association, 85 Phil. 166 (1949), we ruled that, where a violation of company policy or breach of company rules and regulations was found to have been tolerated by management, then the same could not serve as a basis for termination.

All told we see no reason to find that the NLRC gravely abused its discretion when it ruled that private respondent was illegally dismissed. Hence we concur in that ruling. Nonetheless, we find that the award of moral and exemplary damages by the public respondent is not in order and must be deleted. Moral damages are recoverable only where the dismissal of the employee was tainted by bad faith or fraud, or where it constituted an act oppressive to labor, and done in a manner contrary to morals, good customs, or public policy.[13] Exemplary damages may be awarded only if the dismissal was done in a wanton, oppressive, or malevolent manner.[14] None of these circumstances exist in the present case.

WHEREFORE, the petition is DENIED. The assailed resolutions of the National Labor Relations Commission dated March 14, 1996 and April 17, 1996 in NLRC CA No. M-002808-95 are AFFIRMED with MODIFICATION. Petitioner Permex, through its corporate officers, is ORDERED to pay jointly and solidarily the private respondent separation pay at the rate of one (1) month salary for every year of service as well as backwages effective August 23, 1994, inclusive of fringe benefits if any, with legal interest until fully paid, and attorney's fees equivalent to ten (10%) percent of the total monetary award computed at the execution stage hereof. The award of moral and exemplary damages, however, is DELETED. Costs against petitioners.

SO ORDERED.

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

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[1] Rollo, p. 5.

[2] Id. at 42.

[3] Id. at 27-28.

[4] Quebec, Sr. v. National Labor Relations Commission, 301 SCRA 627, 631 (1999).

[5] Ropali Trading Corp. v. National Labor Relations Commission, 296 SCRA 309, 314 (1998); Bataan Shipyard and Engineering Corporation v. NLRC, 269 SCRA 199, 210 (1997).

[6] Travelaire & Tours Corp. v. National Labor Relations Commission, 294 SCRA 505, 510 (1998).

[7] Article 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 employee of his duties;

(c)

Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d)

Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e)

Other causes analogous to the foregoing.

[8] Salafranca v. Philamlife (Pamplona) Village Homeowners Assn. Inc., 300 SCRA 469, 476 (1998); Mirano v. NLRC, 270 SCRA 96, 102 (1997); Molato v. NLRC, 266 SCRA 42, 45 (1997).

[9] RDS Trucking v. National Labor Relations Commission, 294 SCRA 623, 630 (1998); Better Buildings, Inc. v. National Labor Relations Commission, 283 SCRA 242, 248 (1997).

[10] Tan v. National Labor Relations Commission, 299 SCRA 169, 185 (1998); PMI Colleges v. National Labor Relations Commission, 277 SCRA 462, 477 (1997).

[11] Rollo, p.25.

[12] Tumbiga v. National Labor Relations Commission. 274 SCRA 338, 348 (1997).

[13] Consolidated Rural Bank (Cagayan Valley) Inc. v. NLRC, 301 SCRA 223, 235 (1999).

[14] Garcia v. Nationa Labor Relations Commission, 234 SCRA 632, 638 (1994).

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