

GENERAL MILLING CORPORATION, PETITIONER, VS. ERNESTO CASIO, ROLANDO IGOT, MARIO FAMADOR, NELSON LIM, FELICISIMO BOOC, PROCOPIO OBREGON, JR., AND ANTONIO ANINIPOK, RESPONDENTS,

G.R. No. 149552. March 10, 2010

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court seeking the reversal of the Decision[1] dated March 30, 2001 and Resolution[2] dated July 18, 2001 of the Court of Appeals in CA-G.R. SP No. 40280, setting aside the Voluntary Arbitration Award[3] dated August 16, 1995 of the National Conciliation and Mediation Board (NCMB), Cebu City, in VA Case No. AC 389-01-01-95. Voluntary Arbitrator Alice K. Canonoy-Morada (Canonoy-Morada) dismissed the Complaint filed by respondents Ernesto Casio, Rolando Igot, Mario Famador, Nelson Lim, Felicisimo Booc, Procopio Obregon, Jr. and Antonio Aninipok (Casio, et al.) against petitioner General Milling Corporation (GMC) for unfair labor practice, illegal suspension, illegal dismissal, and payment of moral and exemplary damages.

The labor union Ilaw at Buklod ng Mangagawa (IBM)-Local 31 Chapter (Local 31) was the sole and exclusive bargaining agent of the rank and file employees of GMC in Lapu-Lapu City. On November 30, 1991, IBM-Local 31, through its officers and board members, namely, respondents Virgilio Pino,[4] Paulino Cabreros, Ma. Luna P. Jumaoas, Dominador Booc, Bartolome Auman, Remegio Cabantan, Fidel Valle, Loreto Gonzaga, Edilberto Mendoza and Antonio Panilag (Pino, et al.), entered into a Collective Bargaining Agreement (CBA) with GMC. The effectivity of the said CBA was retroactive to August 1, 1991.[5]

The CBA contained the following union security provisions:

Section 3. MAINTENANCE OF MEMBERSHIP - All employees/workers employed by the Company with the exception of those who are specifically excluded by law and by the terms of this Agreement must be members in good standing of the Union within thirty (30) days upon the signing of this agreement and shall maintain such membership in good standing thereof as a condition of their employment or continued employment.

Section 6. The Company, upon written request of the Union, shall terminate the services of any employee/worker who fails to fulfill the conditions set forth in Sections 3 and 4 thereof, subject however, to the provisions of the Labor Laws of the Philippines and their Implementing Rules and Regulations. The Union shall absolve the Company from any and all liabilities, pecuniary or otherwise, and responsibilities to any employee or worker who is dismissed or terminated in pursuant thereof.[6]

Casio, et al. were regular employees of GMC with daily earnings ranging from P173.75 to P201.50, and length of service varying from eight to 25 years.[7] Casio was elected IBM-Local 31 President for a three-year term in June 1991, while his co-respondents were union shop stewards.

In a letter[8] dated February 24, 1992, Rodolfo Gabiana (Gabiana), the IBM Regional Director for Visayas and Mindanao, furnished Casio, et al. with copies of the Affidavits of GMC employees Basilio Inoc and Juan Potot, charging Casio, et al. with "acts inimical to the interest of the union." Through the same letter, Gabiana gave Casio, et al. three days from receipt thereof within which to file their answers or counter-affidavits. However, Casio, et al. refused to acknowledge receipt of Gabiana's letter.

Subsequently, on February 29, 1992, Pino, et al., as officers and members of the IBM-Local 31, issued a Resolution[9] expelling Casio, et al. from the union. Pertinent portions of the Resolution are reproduced below:

Whereas, Felicisimo Booc, Rolando Igot, Procopio Obregon, Jr., Antonio Aninipok, Mario Famador, Nelson Lim and Ernesto Casio, through Ernesto Casio have refused to acknowledge receipt of the letter-complaint dated February 24, 1992, requiring them to file their answer[s] or counter-affidavits as against the charge of "acts inimical to the interest of the union" and that in view of such refusal to acknowledge receipt, a copy of said letter complaint was dropped or left in front of E. Casio;

Whereas, the three (3)[-]day period given to file their answer or counter-affidavit have already lapsed prompting the union Board to investigate the charge ex parte;

Whereas, after such ex parte investigation the said charge has been more than adequately substantiated by the affidavits/witnesses and documentary exhibits presented.

NOW, THEREFORE, RESOLVED as it is hereby RESOLVED, that Ernesto Casio, Felicisimo Booc, Rolando Igot, Procopio Obregon, Jr., Antonio Aninipok, Mario Famador and Nelson Lim be expelled as union member[s] of good standing effectively immediately.

RESOLVED FURTHER, to furnish copy of this Resolution to the GMC Management for their information and guidance with the recommendation as it is hereby recommended to dismiss the above-named employees from work.

Gabiana then wrote a letter[10] dated March 10, 1992, addressed to Eduardo Cabahug (Cabahug), GMC Vice-President for Engineering and Plant Administration, informing the company of the expulsion of Casio, et al. from the union pursuant to the Resolution dated February 29, 1992 of IBM-Local 31 officers and board members. Gabiana likewise requested that Casio, et al. "be immediately dismissed from their work for the interest of industrial peace in the plant."

Gabiana followed-up with another letter[11] dated March 19, 1992, inquiring from Cabahug why Casio, et al. were still employed with GMC despite the request of IBM-Local 31 that Casio, et al. be immediately dismissed from service pursuant to the closed shop provision in the existing CBA. Gabiana reiterated the demand of IBM-Local 31 that GMC dismiss Casio, et al., with the warning that failure of GMC to do so would constitute gross violation of the existing CBA and constrain the union to file a case for unfair labor practice against GMC.

Pressured by the threatened filing of a suit for unfair labor practice, GMC acceded to Gabiana's request to terminate the employment of Casio, et al. GMC issued a Memorandum dated March 24, 1992 terminating the employment of Casio, et al. effective April 24, 1992 and placing the latter under preventive suspension for the meantime.

On March 27, 1992, Casio, et al., in the name of IBM-Local 31, filed a Notice of Strike with the NCMB-Regional Office No. VII (NCMB-RO). Casio, et al. alleged as bases for the strike the illegal dismissal of union officers and members, discrimination, coercion, and union busting. The NCMB-RO held conciliation proceedings, but no settlement was reached among the parties.[12]

Casio, et al. next sought recourse from the National Labor Relations Commission (NLRC) Regional Arbitration

Branch VII by filing on August 3, 1992 a Complaint against GMC and Pino, et al. for unfair labor practice, particularly, the termination of legitimate union officers, illegal suspension, illegal dismissal, and moral and exemplary damages. Their Complaint was docketed as NLRC Case No. RAB-VII-08-0639-92.[13]

Finding that NLRC Case No. RAB-VII-08-0639-92 did not undergo voluntary arbitration, the Labor Arbiter dismissed the case for lack of jurisdiction, but endorsed the same to the NCMB-RO. Prior to undergoing voluntary arbitration before the NCMB-RO, however, the parties agreed to first submit the case to the grievance machinery of IBM-Local 31. On September 7, 1994, Casio, et al. filed their Complaint with Pino, the Acting President of IBM-Local 31. Pino acknowledged receipt of the Complaint and assured Casio, et al. that they would be "seasonably notified of whatever decision and/or action the Board may have in the instant case." [14] When the IBM-Local 31 Board failed to hold grievance proceedings on the Complaint of Casio, et al., NCMB Voluntary Arbitrator Canonoy-Morada assumed jurisdiction over the same. The Complaint was docketed as VA Case No. AC 389-01-01-95.

Based on the Position Papers and other documents submitted by the parties,[15] Voluntary Arbitrator Canonoy-Morada rendered on August 16, 1995 a Voluntary Arbitration Award dismissing the Complaint in VA Case No. AC 389-01-01-95 for lack of merit, but granting separation pay and attorney's fees to Casio, et al. The Voluntary Arbitration Award presented the following findings: (1) the termination by GMC of the employment of Casio, et al. was in valid compliance with the closed shop provision in the CBA; (2) GMC had no competence to determine the good standing of a union member; (3) Casio, et al. waived their right to due process when they refused to receive Gabiana's letter dated February 24, 1992, which required them to submit their answer to the charges against them; (4) the preventive suspension of Casio, et al. by GMC was an act of self-defense; and (5) the IBM-Local 31 Resolution dated February 29, 1992 expelling Casio, et al. as union members, also automatically ousted them as union officers.[16] The dispositive portion of the Voluntary Arbitration Award reads:

WHEREFORE, above premises considered, this case filed by [Casio, et al.] is hereby ordered DISMISSED for lack of merit.

Since the dismissal is not for a cause detrimental to the interest of the company, respondent General Milling Corporation is, nonetheless, ordered to pay separation pay to all [Casio, et al.] within seven (7) calendar days upon receipt of this order at the rate of one-half month per year of service reckoned from the time of their employment until the date of their separation on March 24, 1992, thus:

Employee

Date Hired

Rate/Month

(1/2 mo/yr of service)

Service

Total

Casio

April 24/74

P2,636.29

x

18 years

=

P47,453.22

Igot

May 1980

P2,472.75

x

12 years

=

P29,673.00

Famador

Feb. 1977

P2,498.92

x

15 years

=

P37,483.80

Lim

Aug. 1975

P2,466.21

x

17 years

=

P41,925.57

Booc

Aug. 1978

P2,498.92

x

14 years

=

P34,984.88

Obregon

May 1984

P2,273.23

x

08 years

=

P18,185.84

Aninipok

Sept. 1967

P2,616.01

x

25 years

=

P65,400.25

The attorney's fees for [Casio, et al.'s] counsel shall be ten percent (10%) of the total amount due them; and shall be shared proportionately by all of the same [Casio, et al.].

All other claims are hereby denied.[17]

Dissatisfied with the Voluntary Arbitration Award, Casio, et al. went to the Court of Appeals by way of a Petition for Certiorari under Rule 65 of the Rules of Court to have said Award set aside.

The Court of Appeals granted the writ of certiorari and set aside the Voluntary Arbitration Award. The appellate court ruled that while the dismissal of Casio, et al., was made by GMC pursuant to a valid closed shop provision under the CBA, the company, however, failed to observe the elementary rules of due process in implementing the said dismissal. Consequently, Casio, et al. were entitled to reinstatement with backwages from the time of their dismissal up to the time of their reinstatement. Nevertheless, the Court of Appeals did not hold GMC liable to Casio, et al. for moral and exemplary damages and attorney's fees, there being no showing that their dismissal was attended by bad faith or malice, or that the dismissal was effected in a wanton, oppressive, or malevolent manner, given that GMC merely accommodated the request of IBM-Local 31. The appellate court, instead, made Pino, et al. liable to Casio, et al., for moral and exemplary damages and attorney's fees, since it was on the basis of the imputations and actuations of Pino, et al. that Casio, et al. were illegally dismissed from employment. The Court of Appeals thus decreed:

WHEREFORE, the assailed award is hereby SET ASIDE, and private respondent General Milling Corporation is hereby ordered to reinstate [Casio, et al.] to their former positions without loss of seniority rights, and to pay their full backwages, solidarily with [Pino, et al.]. Further, [Pino, et al.] are ordered to indemnify each of [Casio, et al.] in the form of moral and exemplary damages in the amounts of P50,000.00 and P30,000.00, respectively, and to pay attorney's fees.[18]

The Motion for Reconsideration of GMC was denied by the Court of Appeals in the Resolution dated July 18, 2001.

Hence, GMC filed the instant Petition for Review, arguing that:

I

THE HONORABLE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR EXCESS OF JURISDICTION WHEN IT SET ASIDE THE AWARD OF THE VOLUNTARY ARBITRATOR, AND IN AWARDING REINSTATEMENT AND FULL BACKWAGES TO [Casio, et al.].

II

THE HONORABLE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT SAID THAT PETITIONER GMC FAILED TO ACCORD DUE PROCESS TO [Casio, et al.].

III

THE HONORABLE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR EXCESS OF JURISDICTION WHEN IT DID NOT ABSOLVE PETITIONER GMC OF ANY LIABILITY AND INSTEAD RULED THAT IT WAS SOLIDARILY LIABLE WITH THE UNION OFFICERS FOR THE PAYMENT OF FULL BACKWAGES TO [Casio, et al.].

At this point, we take note that Pino, et al. did not appeal from the decision of the Court of Appeals.

GMC avers that in reviewing and reversing the findings of the Voluntary Arbitrator, the Court of Appeals departed from the principle of conclusiveness of the trial judge's findings. GMC also claims that the findings of the Voluntary Arbitrator as to the legality of the termination from employment of Casio, et al. are well supported by evidence. GMC further insists that before IBP-Local 31 expelled Casio, et al. from the union and requested GMC to dismiss Casio, et al. from service pursuant to the closed shop provision in the CBA, IBP-Local 31 already accorded Casio, et al. due process, only that Casio, et al. refused to avail themselves of such opportunity. GMC additionally maintains that Casio, et al. were expelled by IBP-Local 31 for "acts inimical to the interest of the union," and GMC had no authority to inquire into or rule on which employee-member is or is not loyal to the union, this being an internal affair of the union. Thus, GMC had to rely on the presumption that Pino, et al. regularly performed their duties and functions as IBP-Local 31 officers and board members, when the latter investigated and ruled on the charges against Casio, et al.[19] GMC finally asserts that Pino, et al., the IBP-Local 31 officers and board members who resolved to expel Casio, et al. from the union, and not GMC, should be held liable for the reinstatement of and payment of full backwages to Casio, et al. for the company had acted in good faith and merely complied with the closed shop provision in the CBA.

On the other hand, Casio, et al. counters that GMC failed to identify the specific pieces of evidence supporting the findings of the Voluntary Arbitrator. Casio, et al. contends that to accord them due process, GMC itself, as the employer, should have held proceedings distinct and separate from those conducted by IBM-Local 31. GMC cannot justify its failure to conduct its own inquiry using the argument that such proceedings would constitute an intrusion by the company into the internal affairs of the union. The claim of GMC that it had acted in good faith when it dismissed Casio, et al. from service in accordance with the closed shop provision of the CBA is inconsistent with the failure of the company to accord the dismissed employees their right to due process.

In general, in a "petition for review on certiorari as a mode of appeal under Rule 45 of the Rules of Court, the petitioner can raise only questions of law - the Supreme Court is not the proper venue to consider a factual issue as it is not a trier of facts. A departure from the general rule may be warranted where the findings of fact of the Court of Appeals are contrary to the findings and conclusions of the trial court [or quasi-judicial agency, as the

case may be], or when the same is unsupported by the evidence on record." [20]

Whether Casio, et al. were illegally dismissed without any valid reason is a question of fact better left to quasi-judicial agencies to determine. In this case, the Voluntary Arbitrator was convinced that Casio, et al. were legally dismissed; while the Court of Appeals believed the opposite, because even though the dismissal of Casio, et al. was made by GMC pursuant to a valid closed shop provision in the CBA, the company still failed to observe the elementary rules of due process. The Court is therefore constrained to take a second look at the evidence on record considering that the factual findings of the Voluntary Arbitrator and the Court of Appeals are contradictory.

There are two aspects which characterize the concept of due process under the Labor Code: one is substantive - whether the termination of employment was based on the provision of the Labor Code or in accordance with the prevailing jurisprudence; the other is procedural - the manner in which the dismissal was effected. [21]

After a thorough review of the records, the Court agrees with the Court of Appeals. The dismissal of Casio, et al. was indeed illegal, having been done without just cause and the observance of procedural due process.

In *Alabang Country Club, Inc. v. National Labor Relations Commission*, [22] the Court laid down the grounds for which an employee may be validly terminated, thus:

Under the Labor Code, an employee may be validly terminated on the following grounds: (1) just causes under Art. 282; (2) authorized causes under Art. 283; (3) termination due to disease under Art. 284, and (4) termination by the employee or resignation under Art. 285.

Another cause for termination is dismissal from employment due to the enforcement of the union security clause in the CBA. x x x. (Emphasis ours.)

"Union security" is a generic term, which is applied to and comprehends "closed shop," "union shop," "maintenance of membership," or any other form of agreement which imposes upon employees the obligation to acquire or retain union membership as a condition affecting employment. There is union shop when all new regular employees are required to join the union within a certain period as a condition for their continued employment. There is maintenance of membership shop when employees, who are union members as of the effective date of the agreement, or who thereafter become members, must maintain union membership as a condition for continued employment until they are promoted or transferred out of the bargaining unit or the agreement is terminated. A closed shop, on the other hand, may be defined as an enterprise in which, by agreement between the employer and his employees or their representatives, no person may be employed in any or certain agreed departments of the enterprise unless he or she is, becomes, and, for the duration of the agreement, remains a member in good standing of a union entirely comprised of or of which the employees in interest are a part. [23]

Union security clauses are recognized and explicitly allowed under Article 248(e) of the Labor Code, which provides that:

Art. 248. Unfair Labor Practices of Employers. x x x

x x x x

(e) To discriminate in regard to wages, hours of work, and other terms and conditions of employment in order to encourage or discourage membership in any labor organization. Nothing in this Code or in any other law shall stop the parties from requiring membership in a recognized collective bargaining agent as a condition for employment, except those employees who are already members of another union at the time of the signing of the collective bargaining agreement. (Emphasis supplied.)

It is State policy to promote unionism to enable workers to negotiate with management on an even playing field and with more persuasiveness than if they were to individually and separately bargain with the employer. For this reason, the law has allowed stipulations for "union shop" and "closed shop" as means of encouraging workers to join and support the union of their choice in the protection of their rights and interest vis-à-vis the employer.[24]

Moreover, a stipulation in the CBA authorizing the dismissal of employees are of equal import as the statutory provisions on dismissal under the Labor Code, since "a CBA is the law between the company and the union and compliance therewith is mandated by the express policy to give protection to labor." [25]

In terminating the employment of an employee by enforcing the union security clause, the employer needs only to determine and prove that: (1) the union security clause is applicable; (2) the union is requesting for the enforcement of the union security provision in the CBA; and (3) there is sufficient evidence to support the decision of the union to expel the employee from the union. These requisites constitute just cause for terminating an employee based on the union security provision of the CBA.[26]

There is no question that in the present case, the CBA between GMC and IBM-Local 31 included a maintenance of membership and closed shop clause as can be gleaned from Sections 3 and 6 of Article II. IBM-Local 31, by written request, can ask GMC to terminate the employment of the employee/worker who failed to maintain its good standing as a union member.

It is similarly undisputed that IBM-Local 31, through Gabiana, the IBM Regional Director for Visayas and Mindanao, twice requested GMC, in the letters dated March 10 and 19, 1992, to terminate the employment of Casio, et al. as a necessary consequence of their expulsion from the union.

It is the third requisite - that there is sufficient evidence to support the decision of IBM-Local 31 to expel Casio, et al. - which appears to be lacking in this case.

The full text of the individual but identical termination letters,[27] served by GMC on Casio, et al., is very revealing. They read:

To: [Employee's Name]
From: Legal Counsel
Subject: Dismissal Upon Union Request Thru
CBA Closed Shop Provision

The company is in receipt of two letters dated March 10, 1992 and March 19, 1992 respectively from the union at the Mill in Lapulapu demanding the termination of your employment pursuant to the closed shop provision of our existing Collective Bargaining Agreement. It appears from the attached resolutions that you have been expelled from union membership and has thus ceased to become a member in good standing. The resolutions are signed by the same officers who executed and signed our existing CBA, copies of the letters and resolutions are enclosed hereto for your reference.

The CBA in Article II provides the following:

Section 3. MAINTENANCE OF MEMBERSHIP - All employees/workers employed by the Company with the exception of those who are specifically excluded by law and by the terms of this Agreement must be members in good standing of the Union within thirty (30) days upon the signing of this agreement and shall maintain such membership in good standing thereof as a condition of their employment or continued employment.

Section 6. The Company, upon written request of the Union, shall terminate the services of any employee/worker who fails to fulfill the conditions set forth in Sections 3 and 4 thereof, subject however, to the provisions of the Labor Laws of the Philippines and their Implementing Rules and Regulations. The Union

shall absolve the Company from any and all liabilities, pecuniary or otherwise, and responsibilities to any employee or worker who is dismissed or terminated in pursuant thereof.

The provisions of the CBA are clear enough. The termination of employment on the basis of the closed shop provision of the CBA is well recognized in law and in jurisprudence.

There is no valid ground to refuse to terminate. On the other hand as pointed out in the union's strongly demanding letter dated March 19, 1992, the company could be sued for unfair labor practice. While we would have wanted not to accommodate the union's request, we are left with no other option. The terms of the CBA should be respected. To refuse to enforce the CBA would result in the breakdown of industrial peace and the end of harmonious relations between the union and management. The company would face the collective anger and enmity of its employees who are union members.

In the light of the union's very insistent demand, verbal and in writing and to avoid the union accusation of "coddling" you, and considering the explicitly mandatory language of the closed shop provision of the CBA, the company is constrained to terminate your employment, to give you ample time to look and find another employment, and/or exert efforts to become again a member of good standing of your union, effective April 24, 1992.

In the meantime, to prevent serious danger to the life and property of the company and of its employees, we are placing you under preventive suspension beginning today.

It is apparent from the aforequoted letter that GMC terminated the employment of Casio, et al. relying upon the Resolution dated February 29, 1992 of Pino, et al. expelling Casio, et al. from IBM-Local 31; Gabiana's Letters dated March 10 and 19, 1992 demanding that GMC terminate the employment of Casio, et al. on the basis of the closed shop clause in the CBA; and the threat of being sued by IBM-Local 31 for unfair labor practice. The letter made no mention at all of the evidence supporting the decision of IBM-Local 31 to expel Casio, et al. from the union. GMC never alleged nor attempted to prove that the company actually looked into the evidence of IBM-Local 31 for expelling Casio, et al. and made a determination on the sufficiency thereof. Without such a determination, GMC cannot claim that it had terminated the employment of Casio, et al. for just cause.

The failure of GMC to make a determination of the sufficiency of evidence supporting the decision of IBM-Local 31 to expel Casio, et al. is a direct consequence of the non-observance by GMC of procedural due process in the dismissal of employees.

As a defense, GMC contends that as an employer, its only duty was to ascertain that IBM-Local 31 accorded Casio, et al. due process; and, it is the finding of the company that IBM-Local 31 did give Casio, et al. the opportunity to answer the charges against them, but they refused to avail themselves of such opportunity.

This argument is without basis.

The Court has stressed time and again that allegations must be proven by sufficient evidence because mere allegation is definitely not evidence.[28] Once more, in *Great Southern Maritime Services Corporation. v. Acuña*,[29] the Court declared:

Time and again we have ruled that in illegal dismissal cases like the present one, the onus of proving that the employee was not dismissed or if dismissed, that the dismissal was not illegal, rests on the employer and failure to discharge the same would mean that the dismissal is not justified and therefore illegal. Thus, petitioners must not only rely on the weakness of respondents' evidence but must stand on the merits of their own defense. A party alleging a critical fact must support his allegation with substantial evidence for any decision based on unsubstantiated allegation cannot stand as it will offend due process. x x x. (Emphasis

supplied.)

The records of this case are absolutely bereft of any supporting evidence to substantiate the bare allegation of GMC that Casio, et al. were accorded due process by IBM-Local 31. There is nothing on record that would indicate that IBM-Local 31 actually notified Casio, et al. of the charges against them or that they were given the chance to explain their side. All that was stated in the IBM-Local 31 Resolution dated February 29, 1992, expelling Casio, et al. from the union, was that "a copy of the said letter complaint [dated February 24, 1992] was dropped or left in front of E. Casio." [30] It was not established that said letter-complaint charging Casio, et al. with acts inimical to the interest of the union was properly served upon Casio, that Casio willfully refused to accept the said letter-notice, or that Casio had the authority to receive the same letter-notice on behalf of the other employees similarly accused. It's worthy to note that Casio, et al. were expelled only five days after the issuance of the letter-complaint against them. The Court cannot find proof on record when the three-day period, within which Casio, et al. was supposed to file their answer or counter-affidavits, started to run and had expired. The Court is likewise unconvinced that the said three-day period was sufficient for Casio, et al. to prepare their defenses and evidence to refute the serious charges against them.

Contrary to the position of GMC, the acts of Pino, et al. as officers and board members of IBM-Local 31, in expelling Casio, et al. from the union, do not enjoy the presumption of regularity in the performance of official duties, because the presumption applies only to public officers from the highest to the lowest in the service of the Government, departments, bureaus, offices, and/or its political subdivisions. [31]

More importantly, in *Liberty Cotton Mills Workers Union v. Liberty Cotton Mills, Inc.*, [32] the Court issued the following reminder to employers:

The power to dismiss is a normal prerogative of the employer. However, this is not without limitations. The employer is bound to exercise caution in terminating the services of his employees especially so when it is made upon the request of a labor union pursuant to the Collective Bargaining Agreement. x x x. Dismissals must not be arbitrary and capricious. Due process must be observed in dismissing an employee because it affects not only his position but also his means of livelihood. Employers should therefore respect and protect the rights of their employees, which include the right to labor. x x x.

The Court reiterated in *Malayang Samahan ng mga Manggagawa sa M. Greenfield v. Ramos* [33] that:

While respondent company may validly dismiss the employees expelled by the union for disloyalty under the union security clause of the collective bargaining agreement upon the recommendation by the union, this dismissal should not be done hastily and summarily thereby eroding the employees' right to due process, self-organization and security of tenure. The enforcement of union security clauses is authorized by law provided such enforcement is not characterized by arbitrariness, and always with due process. Even on the assumption that the federation had valid grounds to expel the union officers, due process requires that these union officers be accorded a separate hearing by respondent company. (Emphases supplied.)

The twin requirements of notice and hearing constitute the essential elements of procedural due process. The law requires the employer to furnish the employee sought to be dismissed with two written notices before termination of employment can be legally effected: (1) a written notice apprising the employee of the particular acts or omissions for which his dismissal is sought in order to afford him an opportunity to be heard and to defend himself with the assistance of counsel, if he desires, and (2) a subsequent notice informing the employee of the employer's decision to dismiss him. This procedure is mandatory and its absence taints the dismissal with illegality. [34]

Irrefragably, GMC cannot dispense with the requirements of notice and hearing before dismissing Casio, et al.

even when said dismissal is pursuant to the closed shop provision in the CBA. The rights of an employee to be informed of the charges against him and to reasonable opportunity to present his side in a controversy with either the company or his own union are not wiped away by a union security clause or a union shop clause in a collective bargaining agreement. An employee is entitled to be protected not only from a company which disregards his rights but also from his own union the leadership of which could yield to the temptation of swift and arbitrary expulsion from membership and hence dismissal from his job.[35]

In the case at bar, Casio, et al. did not receive any other communication from GMC, except the written notice of termination dated March 24, 1992. GMC, by its own admission, did not conduct a separate and independent investigation to determine the sufficiency of the evidence supporting the expulsion of Casio, et al. by IBP-Local 31. It straight away acceded to the demand of IBP-Local 31 to dismiss Casio, et al.

The very same circumstances took place in Liberty Cotton Mills, wherein the Court held that the employer-company acted in bad faith in dismissing its workers without giving said workers an opportunity to present their side in the controversy with their union, thus:

While respondent company, under the Maintenance of Membership provision of the Collective Bargaining Agreement, is bound to dismiss any employee expelled by PAFLU for disloyalty, upon its written request, this undertaking should not be done hastily and summarily. The company acted in bad faith in dismissing petitioner workers without giving them the benefit of a hearing. It did not even bother to inquire from the workers concerned and from PAFLU itself about the cause of the expulsion of the petitioner workers. Instead, the company immediately dismissed the workers on May 30, 1964 after its receipt of the request of PAFLU on May 29, 1964 - in a span of only one day - stating that it had no alternative but to comply with its obligation under the Security Agreement in the Collective Bargaining Agreement, thereby disregarding the right of the workers to due process, self-organization and security of tenure.[36] (Emphasis ours.)

In sum, the Court finds that GMC illegally dismissed Casio, et al. because not only did GMC fail to make a determination of the sufficiency of evidence to support the decision of IBM-Local 31 to expel Casio, et al., but also to accord the expelled union members procedural due process, i.e., notice and hearing, prior to the termination of their employment

Consequently, GMC cannot insist that it has no liability for the payment of backwages and damages to Casio, et al., and that the liability for such payment should fall only upon Pino, et al., as the IBP-Local 31 officers and board members who expelled Casio, et al. GMC completely missed the point that the expulsion of Casio, et al. by IBP-Local 31 and the termination of employment of the same employees by GMC, although related, are two separate and distinct acts. Despite a closed shop provision in the CBA and the expulsion of Casio, et al. from IBP-Local 31, law and jurisprudence imposes upon GMC the obligation to accord Casio, et al. substantive and procedural due process before complying with the demand of IBP-Local 31 to dismiss the expelled union members from service. The failure of GMC to carry out this obligation makes it liable for illegal dismissal of Casio, et al.

In *Malayang Samahan ng mga Manggagawa sa M. Greenfield*,[37] the Court held that notwithstanding the fact that the dismissal was at the instance of the federation and that the federation undertook to hold the company free from any liability resulting from the dismissal of several employees, the company may still be held liable if it was remiss in its duty to accord the would-be dismissed employees their right to be heard on the matter.

An employee who is illegally dismissed is entitled to the twin reliefs of full backwages and reinstatement. If reinstatement is not viable, separation pay is awarded to the employee. In awarding separation pay to an illegally dismissed employee, in lieu of reinstatement, the amount to be awarded shall be equivalent to one month salary for every year of service. Under Republic Act No. 6715, employees who are illegally dismissed are entitled to full

backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from the time their actual compensation was withheld from them up to the time of their actual reinstatement but if reinstatement is no longer possible, the backwages shall be computed from the time of their illegal termination up to the finality of the decision. Thus, Casio, et al. are entitled to backwages and separation pay considering that reinstatement is no longer possible because the positions they previously occupied are no longer existing, as declared by GMC.[38]

Casio, et al., having been compelled to litigate in order to seek redress for their illegal dismissal, are entitled to the award of attorney's fees equivalent to 10% of the total monetary award.[39]

WHEREFORE, the instant petition is hereby DENIED. The assailed decision of the Court of Appeals dated March 30, 2001 in CA-G.R. SP No. 40280 is AFFIRMED.

SO ORDERED.

Puno, C.J.,(Chairperson), Carpio Morales, Bersamin, and Villarama, Jr., JJ., concur.

[1] Penned by Associate Justice Cancio C. Garcia with Associate Justices Oswaldo D. Agcaoili and Elvi John S. Asuncion, concurring; rollo, pp. 25-35.

[2] Rollo, p. 37.

[3] Id. at 45-49.

[4] As the Acting President of IBM-Local 31.

[5] Rollo, p. 26.

[6] Id. at 26-27.

[7] CA rollo, pp. 108-110.

[8] Id. at 188.

[9] Rollo, p. 40.

[10] Id. at 41.

[11] Id. at 42.

[12] CA rollo, p. 9.

[13] Id. at 9, 108.

[14] Id. at 107.

[15] Except Pino, et al., who did not submit Position Papers or any other documentary evidence.

[16] Rollo, pp. 47-48.

[17] Id. at 48.

[18] Id. at 35.

[19] Id. at 13.

[20] Development Bank of the Philippines v. Perez, 484 Phil. 843, 845 (2004).

- [21] Inguillo v. First Philippine Scales, Inc., G.R. No. 165407, June 5, 2009.
- [22] G.R. No. 170287, February 14, 2008, 545 SCRA 351, 361-362.
- [23] Inguillo v. First Philippine Scales, Inc., supra note 21.
- [24] Del Monte Philippines, Inc. v. Saldivar, G.R. No. 158620, October 11, 2006, 504 SCRA 192, 203-204.
- [25] Id. at 201.
- [26] Alabang Country Club, Inc. v. National Labor Relations Commission, supra note 22 at 362.
- [27] Rollo, pp. 43-44.
- [28] Rimbunan Hijau Group of Companies v. Oriental Wood Processing Corporation, G.R. No. 152228, September 23, 2005, 470 SCRA 650, 665.
- [29] 492 Phil. 518, 530-531 (2005).
- [30] Rollo, p. 40.
- [31] Marsaman Manning Agency, Inc. v. National Labor Relations Commission, 371 Phil. 827, 836 (1999).
- [32] 179 Phil. 317, 321-322 (1979); Cariño v. National Labor Relations Commission, G.R. No. 91086, May 8, 1990, 185 SCRA 177, 189.
- [33] 383 Phil. 329, 365-366 (2000).
- [34] Easycall CommunicationsPhils., Inc. v. King, G.R. No. 145901, December 15, 2005, 478 SCRA 102, 113-114.
- [35] Cariño v. National Labor Relations Commission, supra note 32 at 189.
- [36] Liberty Cotton Mills Workers Union v. Liberty Cotton Mills, Inc., supra note 32 at 321.
- [37] Supra note 33 at 464.
- [38] Rollo, p. 19.
- [39] Macasero v. Southern Industrial Gases Philippines and/or Neil Lindsay, G.R. No. 178524, January 30, 2009, 577 SCRA 500, 507.

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