MARICALUM MINING CORPORATION, PETITIONER, VS. ANTONIO DECORION, RESPONDENT.

G.R. NO. 158637. April 12, 2006

Ponente: TINGA, J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/g-r-no-158637/

TINGA, J.:

This Petition[1] dated July 8, 2003 filed by Maricalum Mining Corporation (Maricalum Mining) assails the Decision[2] of the Court of Appeals which upheld the labor arbiter's finding that respondent, Antonio Decorion (Decorion), was constructively dismissed and therefore entitled to reinstatement and backwages.

There is no substantial dispute on the operative facts of this case.

Decorion was a regular employee of Maricalum Mining who started out as a Mill Mechanic assigned to the Concentrator Maintenance Department and was later promoted to Foreman I. On April 11, 1996, the Concentrator Maintenance Supervisor called a meeting which Decorion failed to attend as he was then supervising the workers under him. Because of his alleged insubordination for failure to attend the meeting, he was placed under preventive suspension on the same day. He was also not allowed to report for work the following day.

A month after or on May 12, 1996, Decorion was served a Notice of Infraction and Proposed Dismissal to enable him to present his side. On May 15, 1996, he submitted to the Personnel Department his written reply to the notice.

A grievance meeting was held upon Decorion's request on June 5, 1996, during which he manifested that he failed to attend the meeting on April 11, 1996 because he was then still assigning work to his men. He maintained that he has not committed any offense and that his service record would show his efficiency.

On July 23, 1996, Decorion filed before the National Labor Relations Commission (NLRC) Regional Arbitration Branch VI of Bacolod City a complaint for illegal dismissal and payment of moral and exemplary damages and attorney's fees.[3]

In the meantime, the matter of Decorion's suspension and proposed dismissal was referred to Atty. Roman G. Pacia, Jr., Maricalum Mining's Chief and Head of Legal and Industrial Relations, who issued a memorandum on August 13, 1996, recommending that Decorion's indefinite suspension be made definite with a warning that a repetition of the same conduct would be punished with dismissal. Maricalum Mining's Resident Manager issued a memorandum on August 28, 1996, placing Decorion under definite disciplinary suspension of six (6) months which would include the period of his preventive suspension which was made to take effect retroactively from April 11, 1996 to October 9, 1996.

On September 4, 1996, Decorion was served a memorandum informing him of his temporary lay-off due to Maricalum Mining's temporary suspension of operations and shut down of its mining operations for six (6) months, with the assurance that in the event of resumption of operations, he would be reinstated to his former position without loss of seniority rights.

Decorion, through counsel, wrote a letter to Maricalum Mining on October 8, 1996, requesting that he be reinstated to his former position. The request was denied with the explanation that priority for retention and inclusion in the skeleton force was given to employees who are efficient and whose services are necessary during the shutdown.

Conciliation proceedings having failed to amicably settle the case, the labor arbiter rendered a decision[4] dated November 26, 1998, finding Decorion's dismissal illegal and ordering his reinstatement with payment of backwages and attorney's fees. According to the labor arbiter, Decorion's failure to attend the meeting called by his supervisor did not justify his preventive suspension. Further, no preventive suspension should last longer than 30 days.

The NLRC, however, reversed the labor arbiter's decision and dismissed Decorion's complaint.[5] The reversal was premised on the finding that the case was litigated solely on Decorion's allegation that he was dismissed on April 11, 1996. However, during the grievance meeting held on June 5, 1996, Decorion left it up to management to decide his fate, indicating that as of that time, there was no decision to terminate his services yet. According to the NLRC, to consider the events that transpired after April 11, 1996 and make the same the basis for the finding of illegal dismissal would violate Maricalum Mining's right to due process.

On petition for certiorari with the Court of Appeals, the decision of the labor arbiter was reinstated. The appellate court held that Decorion was placed under preventive suspension immediately after he failed to attend the meeting called by his supervisor on April 11, 1996. At the time he filed the complaint for illegal dismissal on July 23, 1996, he had already been under preventive suspension for more than 100 days in violation of Sec. 9, Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code (Implementing Rules) which provides that no preventive suspension shall last longer than 30 days.

The appellate court denied Maricalum Mining's motion for reconsideration in its Resolution[6] dated May 16, 2003.

In this petition, Maricalum Mining insists that Decorion was not dismissed but merely preventively suspended on April 11, 1996. Citing the case of Valdez v. NLRC,[7] petitioner contends that constructive dismissal occurs only after the lapse of more than six (6) months from the time an employee is placed on a "floating status" as a result of temporary preventive suspension from employment. Thus, it goes on to argue, since Decorion was suspended for less than six (6) months, his suspension was legal.

Decorion filed a Comment[8]dated December 5, 2003, maintaining that he was dismissed from employment on April 11, 1996 as he was then prevented from reporting for work. He avers that had the intention of Maricalum Mining been to merely suspend him, it could have manifested this intention by at least informing him of his suspension. As it happened, he was not served with any notice relative to why he was disallowed to report for work. The grievance meeting conducted on June 5, 1996 was allegedly called only after he had repeatedly requested reconsideration of his dismissal.

Maricalum Mining filed a Reply[9] dated April 22, 2004 in reiteration of its arguments.

We reject the petition.

Sections 8 and 9 of Rule XXIII, Book V of the Implementing Rules provide as follows:

> Section 8. Preventive suspension. --- The employer may place the worker concerned under preventive suspension if his continued employment poses a serious and imminent threat to the life or property of the employer or his co-workers.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

> Section 9. Period of Suspension --- No preventive suspension shall last longer than thirty (30) days. The employer shall thereafter reinstate the worker in his former or in a substantially equivalent position or the employer may extend the period of suspension provided that during the period of extension, he pays the wages and other benefits due to the worker. In such case, the worker shall not be bound to reimburse the amount paid to him during the extension if the employer decides, after completion of the hearing, to dismiss the worker. [Emphasis supplied.]

The Rules are explicit that preventive suspension is justified where the employee's continued employment poses a serious and imminent threat to the life or property of the employer or of the employee's co-workers. Without this kind of threat, preventive suspension is not proper.

In this case, Decorion was suspended only because he failed to attend a meeting called by his supervisor. There is no evidence to indicate that his failure to attend the meeting prejudiced his employer or that his presence in the company's premises posed a serious threat to his employer and co-workers. The preventive suspension was clearly unjustified.[10]

What is more, Decorion's suspension persisted beyond the 30-day period allowed by the Implementing Rules. In Premiere Development Bank v. NLRC,[11]private respondent's suspension lasted for more than 30 days counted from the time she was placed on preventive suspension on March 13, 1986 up to the last day of investigation on April 23, 1986. The Court ruled that preventive suspension which lasts beyond the maximum period allowed by the Implementing Rules amounts to constructive dismissal.

Similarly, from the time Decorion was placed under preventive suspension on April 11, 1996 up to the time a grievance meeting was conducted on June 5, 1996, 55 days had already passed. Another 48 days went by before he filed a complaint for illegal dismissal on July 23, 1996. Thus, at the time Decorion filed a complaint for illegal dismissal, he had already been suspended for a total of 103 days.

Maricalum Mining's contention that there was as yet no illegal dismissal at the time of the filing of the complaint is evidently unmeritorious. Decorion's preventive suspension had already ripened into constructive dismissal at that time. While actual dismissal and constructive dismissal do take place in different fashion, the legal consequences they generate are identical.

Decorion's employment may not have been actually terminated in the sense that he was not served walking papers but there is no doubt that he was constructively dismissed as he was forced to quit because continued employment was rendered impossible, unreasonable or unlikely[12] by Maricalum Mining's act of preventing him from reporting for work.

Petitioner's reliance on Valdez v. NLRC, supra, is misplaced. The legal basis of the ruling in that case is the principle underlying Article 286 of the Labor Code which provides that the bona fide suspension of the operation of a business or undertaking for a period not exceeding six (6) months shall not terminate employment. In contrast, the instant case involves the preventive suspension of an employee not by reason of the suspension of the business operations of the employer but because of the employee's failure to attend a meeting. The allowable period of suspension in such a case is only 30 days as provided by the Implementing Rules.

In sum, Maricalum Mining cannot feign denial of due process. Its theory is based entirely on its erroneous reading of Valdez v. NLRC. The fact is that Decorion's preventive suspension was unwarranted and unjustified and lasted for more than the period allowed by law.

WHEREFORE, the instant petition is hereby DENIED. The challenged Decision and Resolution of the Court of Appeals respectively dated May 29, 2002 and May 16, 2003 are hereby AFFIRMED. Costs against petitioner.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, and Carpio-Morales, JJ., concur.

---

[1] Rollo, pp. 12-43.

[2] Id. at 48-55; Dated May 29, 2002; Penned by Associate Justice Candido V. Rivera and concurred in by Associate Justices Delilah Vidallon-Magtolis and Juan Q. Enriquez, Jr.

[3] Records, p. 1.

[4]Id. at 83-92.

[5]Id. at 155-161.

[6] Rollo, p. 57.

[7]G.R. No. 125028, February 9, 1998, 286 SCRA 87.

[8] Rollo, pp. 118-128.

[9]Id. at 131-142.

[10] Rural Bank of Baao, Inc. v. NLRC, G.R. No. 90527, March 23, 1992, 207 SCRA 444.

[11]354 Phil. 851 (1998). See also JRS Business Corporation v. NLRC, 316 Phil. 540 (1995).

[12] Garcia v. NLRC, 372 Phil. 482 (1999).

Turn this case into an audio lecture - facts, issues, ruling and doctrine - at batas.org

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at https://batas.org

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.