

ROQUE D.A. DATOR, PETITIONER, VS. UNIVERSITY OF SANTO TOMAS, REV. FR. TAMERLANE LANA AND REV. FR. RODEL ALIGAN, RESPONDENTS.

G.R. NO. 169464. August 31, 2006

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YNARES-SANTIAGO, J.:

This petition for review on certiorari[1] assails the April 27, 2005 Decision[2] of the Court of Appeals in CA-G.R. SP No. 81378, which reversed the August 29, 2003 Decision[3] and October 30, 2003 Resolution[4] of the National Labor Relations Commission (NLRC) in NLRC CA No. 034433-03 and dismissed petitioner's complaint for lack of merit; and its August 24, 2005 Resolution[5] denying petitioner's motion for reconsideration.

Petitioner Roque D.A. Dator was hired by respondent University of Santo Tomas (UST) in June 1983 as Instructor I of the Institute of Religion with a maximum teaching load of 24 units. On December 15, 1995, petitioner was also hired as Graft Investigation Officer II with the Office of the Ombudsman but he failed to disclose such other employment to respondents, who discovered the same only during the first semester of School Year 2000-2001.

Thus, on June 16, 2000, petitioner was informed that his teaching load would be reduced to 12 hours per week, pursuant to Section 5, Article III of the UST Faculty Code which states that "faculty members who have a full time outside employment other than teaching may not be given a teaching load in excess of 12 hours per week."

Petitioner asked for reconsideration of the reduction in his teaching load which was granted. He was given an additional load of three teaching hours.[6]

On June 15, 2001, petitioner again requested for an additional load of three units but his request was denied by respondent Rev. Fr. Aligan on the ground that "[t]o grant the request when one was already made before for humanitarian and equitable reasons would reduce the subject policy to naught and the granting might become the general rather than the exception to the policy." [7]

Petitioner filed a Complaint-Affidavit[8] to the Chairperson of the Grievance Committee, Dr. Gil Gamila, President of the University of Sto. Tomas Faculty Union, but the complaint was dismissed. Petitioner appealed to respondent Rev. Fr. Tamerlane Lana, Rector of respondent UST[9] but the appeal was denied.[10]

Petitioner thus filed a complaint for Illegal Reduction of Teaching Load and Illegal Change of Employment Status, Damages, Unpaid Benefits and Attorney's Fees and illegal constructive dismissal before the Labor Arbiter on February 19, 2002.

Petitioner claimed that his arbitrary demotion from full-time to part-time faculty member violated the provisions of the CBA, as well as his right to security of tenure. Likewise, he argued that the UST Faculty Code which respondents relied upon to reduce his teaching load has been superseded by the CBA. In support of his contentions, petitioner cited the following sections of Article IV of the CBA:

Section 3. Normal Teaching Load. – Every faculty member with a permanent appointment shall be entitled to no less than the same teaching load or assignment as he had in the previous semesters, excluding the overloads and substitute load except in justified deloading as herein provided.

x x x x

Section 5. Reduction of Teaching Load. – The teaching load of a faculty member may be reduced for any of the following reasons:

a)

A reduction in the number of classes or sections in the faculty, college, school or department concerned, provided that, in such case a compensating load in other faculties, colleges, school or department shall, as far as possible, be made available to the faculty member concerned;

b)

Non-offering of his/her specialized subject along his/her expertise in any given semester or school year;

c)

By way of sanction for inefficiency duly proven after due process and in accordance with standards or criteria in force in the UNIVERSITY;

d)

Failing Health of the faculty member duly certified by a Board of three (3) physicians teaching in the Faculty of Medicine and Surgery of the University chosen as follows: one by the faculty member concerned, one by the UNIVERSITY and one by the FACULTY UNION.

Section 6. Procedure for the Reduction of Load. – In case of deloading that affects permanent faculty members, the following rules shall be observed, to wit:

a)

The available subject shall first be given to the faculty members who have been teaching the particular subject;

b)

Seniority as to the number of years of handling the particular subject shall be used as basis in the distribution of the available particular subject;

c)

In case the faculty member concerned shall have taught the particular subject for an equal length of time priority shall be given to the faculty member having a higher rank;

d)

In case the faculty member concerned shall have taught the particular subject for an equal length of time and holding the same rank, preference shall be given to the faculty member who has a higher efficiency rating;

e)

In case the matter cannot be settled by the use of the foregoing data, the particular available subjects shall be distributed to the faculty members concerned in proportion to the faculty members' average teaching assignment in the immediately preceding school year.

In the case of non-tenured faculty members, priority in the distribution of available subjects among them in the event of a bona-fide deloading shall be in accordance with the following criteria that are to be applied in the order of mention to wit:

- a)
length of service;
- b)
number of semesters of handling the particular subject; and
- c)
efficiency rating.

Section 7. Notice of deloading. Faculty members who shall be affected by a process of deloading should be given a written notice thereof, at least two (2) weekes before the start of every semester; conversely, faculty members who, for one reason or another, are not available to teach for the succeeding semester, should inform the dean of such fact at least two (2) weeks before the start of the semester.

On the other hand, respondents maintained that petitioner's teaching load was reduced in accordance with Sections 5 and 6 of Article III of the Faculty Code which provide:

SEC. 5 – Faculty members who have a full time outside employment other than teaching may not be given a teaching load in excess of 12 hours per week. The maximum load of part time employees should be arranged in accordance with the following table:

Hours of Weekly Work

Load

40-48

12 Units

30-39

15 Units

20-29

18 Units

10-19

21 Units

SEC. 6 – All faculty members shall submit each semester in writing to their respective Deans a statement of the number of teaching hours per week to be rendered in other institutions and/or daily hours of work or employment, inside or outside the University.

The Labor Arbiter ruled in favor of respondents holding that the situation contemplated in Section 5, Article III of the Faculty Code, when evaluated together with the provisions of the CBA, constitutes a ground for teaching load reduction.[11]

On appeal, the NLRC ordered the restoration of petitioner's faculty member status to full-time. Respondents'

motion for reconsideration was denied. Petitioner's partial motion for reconsideration with regard to the award for backwages and damages was likewise denied.

Respondents filed a petition for certiorari before the Court of Appeals which reversed the NLRC decision and sustained the findings of the Labor Arbiter in its assailed Decision dated April 27, 2005, the dispositive portion of which states:

WHEREFORE, premises considered, we hereby GRANT the petition. The decision dated August 29, 2003 and the order dated October 30, 2003 of the National Labor Relations Commission in the case "Roque A. Dator vs. University of Sto. Tomas and/or Rev. Tamerlane Lana, NLRC CA No. 034433-03" is hereby declared NULL AND VOID and is accordingly SET ASIDE. The complaint is hereby DISMISSED for lack of merit.

SO ORDERED. [12]

The Court of Appeals denied petitioner's motion for reconsideration. Hence, this petition raising the following issues:

THE APPELLATE COURT GROSSLY DEPARTED FROM
APPLICABLE LAW AND PREVAILING JURISPRUDENCE

I

IN NOT FINDING [THAT] PETITIONER'S DELOADING WAS WITHOUT JUST CAUSE, WITHOUT
DUE PROCESS AND IN VIOLATION OF AN EXTANT CBA BETWEEN UST AND THE UST
FACULTY UNION

II

IN ITS FLAWED INTERPRETATION OF THE APPLICABLE PROVISIONS OF THE CBA AND THE
UST FACULTY CODE

III

IN FINDING [THAT] PETITIONER HAD COMMITTED MISREPRESENTATION

IV

IN FINDING THAT PETITIONER HAD THE BURDEN OF PROOF IN SHOWING THAT OTHER
FACULTY MEMBERS SIMILARLY SITUATED WERE GIVEN FULL-TIME LOADS

V

IN FAILING TO SEE THAT RESPONDENT UST HAD ALREADY ADMITTED IN ITS PLEADINGS
THAT OTHER GOVERNMENT EMPLOYEES HAD BEEN GRANTED FULL-TIME TEACHING LOADS

VI

IN FAILING TO FIND [THAT] UST HAD ACTED IN BAD FAITH.[13]

Petitioner contends that he is a tenured faculty member thus he is entitled to the same teaching load as he had in the previous semesters; that he was not accorded due process when respondents unilaterally reduced his teaching load; that Section 5, Article III of the Faculty Code has no application in this case; and that respondents acted in bad faith.

Respondents maintain that petitioner's teaching load was reduced in accordance with Section 5, Article III of the Faculty Code; that they did not violate petitioner's right to due process and that he was given an opportunity to be

heard; that petitioner falsified at least 13 written statements where he deliberately failed to mention his full time employment with the Office of the Ombudsman.

The petition lacks merit.

The issues for resolution are: 1) whether the reduction of petitioner's teaching load was justified; and 2) whether petitioner was denied due process.

We agree with the Court of Appeals' ruling that while the CBA provides grounds for reduction of teaching load, the question of whether a faculty member is considered full-time or part-time is addressed by the Faculty Code which provides that where the full-time faculty member is at the same time working as a full-time employee elsewhere, the faculty member is considered part-time and a 12-hour teaching load limitation is imposed.

There is no dispute that petitioner was holding a full-time position with the Office of the Ombudsman while working as a faculty member in UST. Accordingly, Section 5, Article III of the Faculty Code applies. We quote with approval the ruling of the Court of Appeals, to wit:

We completely disagree with the NLRC's conclusions as it applied the wrong rules and misappreciated the evidence on record. The NLRC gravely abused its discretion on this point for its complete disregard of the Faculty Code.

While the NLRC correctly viewed the CBA as the primary instrument that governs the relationship between UST and its unionized faculty members, it disregarded Article XX of this CBA which reconciles the CBA with the Faculty Code. Article XX states:

"ARTICLE XX FACULTY CODE

The provisions of the Faculty Code of 1981, as amended, which are not otherwise incorporated in the CBA and which are not in conflict with any provisions of the latter shall remain in full force and effect. In the event of conflict between a faculty code provision and the CBA, the provision of the latter shall prevail." (Emphasis supplied)

Thus, contrary to the NLRC's conclusion, the UST Faculty Code continues to exist and to apply to UST faculty members, but must give way if its terms are in conflict with what the CBA provides. The standard in determining the applicable rule – and the one that the NLRC completely missed – is whether a conflict exists between the provisions the parties cited.

We see no conflict between the provisions the parties respectively cited as these provisions apply to different situations. Article IV of the CBA are the rules on the teaching loads that faculty members may normally expect to carry; it provides as well the grounds or reasons for giving a tenured faculty member less than his normal teaching load. These provisions do not address the question of when a faculty member is to be considered a full-time or a part-time faculty member. Whether a faculty member should only be on part-time basis is governed by Section 5 Article III of the UST Faculty Code we have quoted above. Thus, the provisions Dator cited regarding deloading and the authorized grounds therefore do not apply because what is involved is a change of status from full-time faculty member to a part-time one due to the faculty member's full-time employment elsewhere.

In contrast with the "authorized" causes for deloading under the CBA, the change of status from full-time faculty member with a 24-unit load to a part-time one with a 12-unit load in effect involves a "disqualification" to be a full-time faculty member because of the very practical reason that he or she is already a full-time employee elsewhere. In the present case, this "disqualification" is compounded by Dator's repeated misrepresentations about his employment status outside UST. The present case therefore is closer to being a disqualification situation coupled with a disciplinary cause, rather than one involving a purely "authorized"

deloading under the CBA.[14]

Petitioner argues that he was under no obligation to disclose his employment with the Office of the Ombudsman. He claims that the only information required of him pertained to 1) other colleges where he is teaching, 2) teaching loads outside the university, and 3) a business firm he is employed with. He argues that the Office of the Ombudsman, being a government agency, does not fall under any of the foregoing categories.[15]

Petitioner's argument is flimsy and deserves scant consideration.

Section 6, Article III of the Faculty Code states that all faculty members must submit each semester a statement of the number of teaching hours per week to be rendered in other institutions and/or daily hours of work or employment, inside or outside the University. The rationale behind the rule is unmistakable. As pointed out by respondents, there is a need to maintain UST's quality of education as well as to ensure that government service is not jeopardized.[16]

Petitioner admitted in his letter-request dated July 15, 2001 that "with the implementation of a CHED Circular, the teaching load assignment of government employees was limited to only 12 units per semester x x x so as not to prejudice the interests of both the government and the University and/or college concerned." [17] It is clear therefore that petitioner was aware of the limitation.

Moreover, we find that petitioner was not denied due process. It is settled that due process is simply an opportunity to be heard.[18] In this case, respondents informed petitioner that his teaching load would be reduced as he was working full-time with the Office of the Ombudsman. Petitioner asked for reconsideration twice. His first request was granted and he was given an additional load of three units for School Year 2000-2001. For School Year 2001-2002, petitioner again requested an additional load of three units but was denied.

Upon denial of his second request, petitioner availed of the grievance procedure provided in the CBA.[19] Yet again, after his complaint was dismissed, petitioner appealed directly to respondent Fr. Lana. As observed by the Court of Appeals, petitioner exhausted the internal mechanism of seeking redress within UST's administrative machinery.[20] Contrary to petitioner's claims, he was accorded due process.

We likewise reject petitioner's claim that respondents acted in bad faith. A review of the record reveals that respondents merely implemented the Faculty Code which clearly sets a 12-hour load limitation to faculty members who are also full-time employees elsewhere. And while petitioner decries an alleged discrimination against him, he failed to prove his allegations with substantial evidence which is that amount of evidence a reasonable mind might accept as adequate to support a conclusion.[21]

All told, petitioner's complaint cannot be sustained. An employee's bare allegations of constructive dismissal, when uncorroborated by the evidence on record, cannot be given credence.[22] As aptly held by the Court of Appeals:

A constructive dismissal occurs when the law deems that there is effectively a termination of employment or "a quitting because continued employment is rendered impossible, unreasonable or unlikely, such as in an offer involving a demotion in rank and a diminution in pay." Where, as in the present case, the employer was fully justified in giving a faculty member a lesser load because the latter is disqualified under applicable rules from handling a full load, and where the faculty member committed repeated misrepresentations in his bid to maintain his full load, we cannot see any legal or factual basis to conclude that the faculty member had been constructively dismissed.

We conclude from all these that UST committed no illegality when it ordered the reduction of Dator's load from twenty-four (24) units to twelve (12) units per semester. Substantively, there was factual basis for

deloading. Procedurally, Dator had been given full opportunity to be heard. He was even accommodated for one school year with an extra three-unit load that he accepted. After this acceptance and the express recognition that indeed he could only handle a twelve-unit load, private respondent Dator can no longer claim that he should after all been given a full twenty-four unit load. Thus, the NLRC's conclusions - based on a skewed reading of the facts and the application of the wrong rules - cannot but be attended by grave abuse of discretion amounting to lack or excess of jurisdiction.[23]

WHEREFORE, the instant petition is DENIED. The Decision dated April 27, 2005 of the Court of Appeals in CA-G.R. SP No. 81378 ordering the dismissal of petitioner's complaint for lack of merit; and its Resolution dated August 24, 2005 denying petitioner's motion for reconsideration, are hereby AFFIRMED.

SO ORDERED.

Panganiban, C.J., (Chairperson), Austria-Martinez, Callejo, Sr. and Chico-Nazario, JJ., concur.

[1] Rollo, pp. 8-27.

[2] Id. at 29-51. Penned by Associate Justice Arturo D. Brion and concurred in by Associate Justices Eugenio S. Labitoria and Eliezer R. de los Santos.

[3] CA rollo, pp. 35-49. Penned by Commissioner Victoriano R. Calaycay and concurred in by Commissioners Raul T. Aquino and Angelita A. Gacutan.

[4] Id. at 50.

[5] Rollo, pp. 53-56.

[6] CA rollo, p. 408.

[7] Id. at 90.

[8] Id. at 85-88.

[9] Id. at 91-92.

[10] Id. at 93.

[11] Id. at 198.

[12] Rollo, p. 50.

[13] Id. at 15-16.

[14] Id. at 42-44.

[15] Id. at 22.

[16] Id. at 71.

[17] CA rollo, p. 410.

[18] Central Pangasinan Electric Cooperative, Inc. v. Macaraeg, 443 Phil. 866, 876 (2003).

[19] Rollo, p. 11.

[20] Id. at 47.

[21] *Iriga Telephone Co., Inc. v. National Labor Relations Commission*, 350 Phil. 245, 253 (1998).

[22] *Go v. Court of Appeals*, G.R. No. 158922, May 28, 2004, 430 SCRA 358, 366.

[23] *Rollo*, pp. 49-50.

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