KEPHILCO MALAYA EMPLOYEES UNION AND LEONILO BURGOS, PETITIONERS, VS. KEPCO PHILIPPINES CORPORATION, RESPONDENT.

G.R. NO. 171927. June 29, 2007

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Petitioners challenge the January 13, 2006 Decision and the March 3, 2006 Resolution of the Court of Appeals[1] finding grave abuse of discretion on the part of the National Labor Relations Commission (NLRC) in reversing the labor arbiter's decision.

Kepco Philippines Corporation (respondent), a subsidiary of Korea Electric Power Corporation (KEPCO), is engaged in the business of power generation as an independent power producer which operates the Malaya Thermal Power Plant in Pililla, Rizal.

On January 16, 1996, respondent employed petitioner Leonilo Burgos (Burgos) as a first class turbine operator with a monthly salary of P38,758. Four years later, Burgos became the president of co-petitioner Kephilco Malaya Employees Union (the union), the certified collective bargaining agent of respondent's rank-and-file employees.

Sometime in November 2002, the president of KEPCO visited the plant site and granted the employees the sum of US$1,000 as a sign of goodwill, which amount Burgos accepted in his capacity as union president.

At the union's general membership meeting on February 7, 2003, Burgos made the following remarks in response to a question raised on the floor concerning the status of the US$1,000 gift: "What is the problem if the US$1,000 is with me. It is intact. Don't worry. Just wait because we will buy gifts for everybody. The amount of US$1,000 is a small amount compared to a KIA plus P700,000, which was possibly offered in exchange for the CBA during the negotiation but which I did not show any interest in."[2] (Underscoring supplied)

On the directive of respondent after learning of Burgos' remarks, an initial investigation was conducted, the results of which became the basis of the filing of an administrative charge against Burgos for violation of the following sections in respondent's Company Code of Employee Discipline:

> 7.33 Initiating and[/]or engaging in any kind of activity (collective and[/]or individual) which causes damage and/or prejudice to the Company, its officers and employees (i.e. instigation)
>
> 7.34 Sending and/or disseminating letters or communications which tends [sic] to discredit or cause damage to the Company, its officers or its employees.[3] (Underscoring supplied)

Giving his side on the matter, Burgos, in a letter to the KEPCO president which was quoted in his verified Position Paper, recalled the conversation that transpired between him and respondent's personnel manager bearing on his above-questioned remarks about a "Kia plus P700,000" as follows:

> Sometime in June 2000, Mr. K.Y. Kim, the Personnel Manager then, requested for a meeting with the KMEU

> officers. It was scheduled at 1:00 PM. Among the officers, I was the first to arrive. Mr. K.Y. Kim also arrive[d] ahead. Mr. Kim and I talked with each other. During the conversation, he casually asked me: "Do you have a service?" I answered: "Yes, I have: two (2) cars, one (1) brand new and one (1) second hand." Then he said: "How about my KIA PREGIO plus P700,000.00?" Thinking that he was testing me (sinusubukan ako), I said with a smile: "For what? For CBA exchange?" He laughed at my answer but did not make any reply. He just told me that he was leaving for Korea for good in August or September.[4] (Underscoring supplied)

Respondent, on the other hand, proffered that Kim denied Burgos' allegation. It presented no written statement of Kim, however.

After notice and hearing,[5] respondent found Burgos guilty of violating Section 7.34 (disseminating communications which tend to discredit or cause damage to the company, its officers or its employees), punishable by outright dismissal. It accordingly terminated his employment effective at the close of business hours of July 1, 2003, by notice of termination dated June 30, 2003.[6]

Conciliation before the National Conciliation and Mediation Board having failed, Burgos filed on August 29, 2003 a complaint for illegal dismissal, unfair labor practice, and damages, docketed as NLRC NCR Case No. 08-10165-03.

By Decision of March 31, 2004, the labor arbiter upheld the legality of the dismissal but awarded separation pay to Burgos in the interest of justice. The dispositive portion of the decision reads:

> WHEREFORE, respondent-KEPCO PHILIPPINES CORPORATION is hereby directed to pay complainant's separation pay equivalent to one month's salary for every year of service in the total amount of (P271,306.00) TWO HUNDRED SEVENTY ONE THOUSAND THREE HUNDRED AND SIX PESOS (P38,658.00 X 7 years).
>
> SO ORDERED.[7]

Petitioners appealed to the NLRC while respondent partially appealed with respect to the grant of separation pay.

By Resolutions of April 28, 2005 and June 30, 2005,[8] the NLRC reversed the decision of the labor arbiter and denied respondent's motion for reconsideration, respectively. The dispositive portion of the main resolution reads:

> WHEREFORE, the assailed decision of 31 March 2004 is REVERSED and SET ASIDE. Accordingly, the respondent company is hereby ordered to immediately reinstate complainant-appellant LEONILO C. BURGOS to his former position without loss of seniority rights and other benefits and to pay him full backwages from the time his salary was illegally withheld from him up to the date of his actual reinstatement, which is computed as of the date of the promulgation of this Resolution in the total amount of NINE HUNDRED FIFTEEN THOUSAND THREE HUNDRED THIRTY FOUR and 77/100 (P915,334.77) PESOS plus ten (10%) percent of the total monetary award in the amount of NINETY ONE THOUSAND FIVE HUNDRED THIRTY THREE AND 48/100 (P91,533.48) PESOS as and by way of attorney's fees.
>
> For lack of factual or legal basis, all other claims are dismissed.
>
> SO ORDERED.[9]

Respondent elevated the case via petition for certiorari to the Court of Appeals which granted the same by the assailed decision and resolution which reversed those of the NLRC.

The dispute boils down to the issue of whether Burgos' remarks in the course of a union meeting constitute serious misconduct to warrant his dismissal from employment.

The petition is impressed with merit.

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Serious misconduct is defined as the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error of judgment.[10] To be serious within the meaning and intendment of the law, the misconduct must be of such grave and aggravated character and not merely trivial or unimportant.[11]

The labor arbiter observed that Burgos' remarks could spark unrest of dire consequences and ignite a nationwide dispute of disastrous effects. Other than the irrelevant fact that preventive mediation failed, however, the labor arbiter cited no substantial evidence to support the sweeping conclusion.

In reversing the labor arbiter's decision, the NLRC found that in making the questioned remarks, Burgos could have sought to prove his sincerity to the union members and disabuse their minds of any allusion of misappropriation by laying stress on his personal disinterest in pecuniary matters and by citing, in the interest of transparency, what he must have believed was an attempt at subornation, which he deemed put his integrity to the test.

It is settled doctrine that in controversies between a worker and his employer, doubts reasonably arising from the evidence or in the interpretation of agreements and writings should be resolved in the worker's favor.[12]

Moreover, serious misconduct requires a wrongful intent,[13] the presence of which this Court fails to appreciate, the controversial remarks having been uttered in the course of a legitimate union meeting over which Burgos presided as head.

In Lopez v. Chronicle Publications Employees Association,[14] upon which respondent relies to support its case, the employees were dismissed for publishing in the union newspaper their suspicion which actually amounted to a public accusation that their employer was exerting political pressure on a public official to thwart some legitimate activities of the employees.

Respondent's reliance on Lopez is misplaced, however. The therein erring employee deliberately and unnecessarily utilized a different medium' one of a permanent nature'[15] without any justification.[16]

This Court is not, of course, unmindful of cases[17] involving unpleasant verbal communication in the workplace. The attendant factual antecedents in the present case do not, however, sufficiently reflect a scornful attitude and depravity of conduct on the part of Burgos for his questioned remarks to be considered as serious misconduct.

In St. Michael's Institute v. Santos,[18] this Court reinstated the employees who were dismissed for uttering offensive remarks in their speeches denouncing the corrupt practices of the administration in an assembly. In finding dismissal too harsh a penalty, this Court ruled:

> The employer's right to conduct the affairs of [its] business, according to its own discretion and judgment, is well-recognized. An employer has a free reign and enjoys wide latitude of discretion to regulate all aspects of employment, including the prerogative to instill discipline in its employees and to impose penalties, including dismissal, upon erring employees. This is a management prerogative, where the free will of management to conduct its own affairs to achieve its purpose takes form. The only criterion to guide the exercise of its management prerogative is that the policies, rules and regulations on work-related activities of the employees must always be fair and reasonable and the corresponding penalties, when prescribed, commensurate to the offense involved and to the degree of the infraction.[19]

The magnitude of the infraction must thus be weighed and equated with the penalty prescribed and must be commensurate thereto. Where a penalty less punitive would suffice, whatever missteps may have been committed by the employee ought not to be visited with a consequence so severe such as dismissal from employment.[20]

In labor-management relations, there can be no higher penalty than dismissal from employment. For it severs

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employment ties and could well be the economic death sentence of an employee. Dismissal prejudices the socio-economic well-being of the employee's family and threatens the industrial peace. Due to its far-reaching implications, the Labor Code decrees that an employee cannot be dismissed, except for the most serious causes. The overly concern of our laws for the welfare of employees is in accord with the social justice philosophy of our Constitution.[21] Indeed, the employer's inherent right to discipline is subject to reasonable regulation by the State in the exercise of its police power.[22]

Records show that respondent paid Burgos his salary from October 24-31, 2005,[23] in compliance with the order of reinstatement pending appeal. There is no showing that respondent resumed compliance with the January 19, 2006 Order[24] re-enforcing the reinstatement pending appeal after the expiration of the 60-day Temporary Restraining Order issued by the Court of Appeals.[25] The salary which respondent paid Burgos for the period October 24-31, 2005 must thus be excluded in the computation of the award of backwages.

WHEREFORE, the petition is GRANTED. The January 13, 2006 Decision and the March 3, 2006 Resolution of the Court of Appeals are REVERSED and SET ASIDE.

The April 28, 2005 Resolution of the National Labor Relations Commission is REINSTATED, with modification in the computation of the total monetary benefits to reflect the current appropriate amount less the compensation actually received during reinstatement pending appeal.

SO ORDERED.

Carpio, Acting (Acting Chairperson), Tinga, and Velasco, Jr., JJ., concur.
Quisumbing, (Chairperson), J., on official leave.

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[1] CA rollo, pp. 344-351, 376. Both assailed orders in CA-G.R. SP No. 90928 were penned by Justice Mario L. Guariña III, with Justices Roberto A. Barrios and Santiago J. Ranada, concurring.

[2] Records, p. 26.

[3] Id. at 100.

[4] Id. at 25-26.

[5] Id. at 61-62, 66-68, 101-103. Hearings were conducted on May 22, 2003 and June 19, 2003.

[6] Id. at 48, 104.

[7] Rollo, p. 192. Penned by Labor Arbiter Nieves Vivar-De Castro.

[8] Id. at 40-50, 255-256. Both orders in NLRC CA No. 040833-04 were penned by Commissioner Romeo C. Lagman with the concurrence of Commissioner Tito F. Genilo. Commissioner Lourdes C. Javier was on leave at the first resolution and took no part in the second resolution.

[9] Id. at 49.

[10] Roquero v. Philippine Airlines, 449 Phil. 437, 443 (2003).

[11] Villamor Golf Club v. Pehid, G.R. No. 166152, October 4, 2005, 472 SCRA 36, 48.

[12] Acuña v. Court of Appeals, G.R. No. 159832, May 5, 2006, 489 SCRA 658; Phil. Employ Services and Resources, Inc. v. Paramio, G.R. No. 144786, April 15, 2004, 427 SCRA 732.

[13] National Labor Relations Commission v. Salgarino, G.R. No. 164376, July 31, 2006, 497 SCRA 361-362. Contrary to respondent's claim of immateriality of any justification, San Miguel Corporation v. Ubaldo (G.R. No. 92859, February 1, 1993, 218 SCRA 293) is not in point since it is a case of willful disobedience of a company's lawful work-connected order.

[14] 120 Phil. 1490 (1964).

[15] Cf. People v. Santiago, 115 Phil. 219 (1962) by analogy; vide discussion infra on penalty.

[16] Cf. Dabuet v. Roche Pharmaceuticals, Inc., No. L-45402, April 30, 1987, 149 SCRA 386 concerning a union's grievance letter addressed to management as a concerted act for the employees' mutual aid, protection and benefit; Cosep v. National Labor Relations Commission, 353 Phil. 148 (1998) where an employee was merely expressing an opinion in an open letter; Fujitsu Computer Products Corporation of the Philippines v. Court of Appeals, G.R. No. 158232, March 31, 2005, 454 SCRA 737 involving an employee's act of sending an electronic mail as an expression of sympathy for the plight of a superior.

[17] Samson v. National Labor Relations Commission, 386 Phil. 669 (2000) and cases cited therein.

[18] 422 Phil. 723 (2001).

[19] Id. at 732-733.

[20] Id. at 733-734.

[21] Felix v. National Labor Relations Commission, G.R. No. 148256, November 17, 2004, 442 SCRA 465, 484.

[22] Associated Labor Unions-TUCP v. NLRC, 362 Phil. 322, 329 (1999).

[23] Vide CA rollo, pp. 328-331, in the amount of P8,044.86.

[24] Records, pp. 356-357 (pagination discontinued).

[25] Vide Roquero v. Philippine Airlines, supra note 10, stating that it is obligatory on the part of the employer to reinstate and pay the wages of the dismissed employee during the period of appeal until reversal by the higher court.

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