

RICARDO ALZOSA, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND METAL LUX INDUSTRIES, INC., RESPONDENTS.*G.R. No. 50296. February 14, 1983*

Ponente: FERNANDO, C.J.

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Is there full respect accorded to the constitutional mandate on security of tenure[1] if notwithstanding the finding of illegal dismissal and an order of reinstatement, there was no award of back wages? That is the issue raised in this petition for certiorari against respondents National Labor Relations Commission and Metal Lux Industries, Inc. In the order sought to be reviewed, it was noted that the services of complainant, now petitioner, "was being terminated because of (1) serious misconduct or willful disobedience of the order of employer or representative in connection with his work; and (2) gross and habitual neglect of duties. (Annex 2-B of Position Paper of respondent) More particularly, complainants' offenses were: habitual absences without excuse, habitual lateness, leaving his post without permission and disobedience to his foreman and department head. (affidavit of Pancrasio B. Calabon dated January 25, 1977)." [2] It was also stated: "Further examination of the evidence presented by the respondent shows that complainant incurred tardiness on March 14, 15, 17, 18, 19, 1975; unexcused undertime on March 19, 24, 1975; and unexcused absences on March 4, 5, 6, and 21, 1975. Furthermore, on April 14, 1975, complainant refused and flatly disobeyed the instruction of the production coordinator, temporarily assigning him to go to Oceanic Glass Supplies to select mirror for cutting in the absence of the regular employee doing the job." [3]

There was in such order, however, this circumstance favorable to the petitioner, who, although reinstated, was denied back wages notwithstanding failure of private respondent "to show the company policy on employee attendance and tardiness. And if there was really such a policy, it was not shown that the same was known to the employee concerned. Likewise, even assuming that the complainant really committed the act of insubordination as charged, we are of the opinion that dismissal of the employee would be too severe a penalty under the circumstance, considering that the immediate supervisor only recommend a transfer of the complainant to other [sic] department. But this should not be construed as a condonation of [the conduct] of the employee, who is hereby warned that a repetition thereof would be drastically dealt with. The complainant is not entirely blameless. For this reason, we are delating the award of backwages." [4] Hence, this certiorari petition.

The Solicitor General was required to comment. He did so and referred to the findings of private respondent as to the infractions justifying the denial of backwages. He did not stop there. He also included the dispositive portion of the decision of the Labor Arbiter. Thus: ["Wherefore], premises considered, respondent Metal Lux Industries, Inc. is hereby [ordered] to reinstate complainant Ricardo Alzosa to his former position in the company as glass cutter without loss of seniority rights and other privileges appertaining thereto with full back wages computed at P225.00 monthly from the time of his dismissal on May 2, 1975, until he is actually reinstated without qualification and deductions. For this purpose, respondent is likewise [ordered] to comply with these orders immediately upon receipt of a copy of this Decision. Respondent is further [ordered] to submit proof of

compliance immediately thereafter." [5] Hence, the appeal to the respondent National Labor Relations Commission, which as noted above, affirmed the reinstatement but deleted the plea for back wages.

This Court affirms the reinstatement but reverses the order of public respondent National Labor Relations Commission insofar as it denied the payment of back wages.

- The order itself makes clear that no ruling should be made on the question of his tardiness as well as unexcused absences, there being a failure of private respondent "to show the company policy on employee attendance and tardiness." His only fault, therefore, again as pointed out therein, and this, merely on an assumption, was an "act of insubordination," which, as correctly pointed out, would not be a valid cause for "dismissal of the employee" as it "would be too severe a penalty under the circumstance." It is not to be forgotten that the immediate supervisor only recommended a transfer of the complainant to another department. To deny him, therefore, back wages under the circumstance, would be to repudiate the concept enunciated in a long line of decisions starting from *Philippine Air Lines, Inc. v. Philippine Airlines Employees Association*, [6] a 1974 decision. This Court has since then consistently vitalized the guarantee of security of tenure. [7]

- *Bustillos v. Inciong*, [8] decided only last month, ordered three years back pay as is usually done in cases of this nature. There are, however, circumstances that militate against giving petitioner three years back pay. He was not blameless on the question of his going back to work. He could have done so as early as January 24, 1978 there being the Labor Arbiter's decision ordering his reinstatement. According to the Comment of private respondent considered as the answer: "In spite of such knowledge, not once did petitioner present himself to respondent company to effect his reinstatement; nor was there any communication expressing his intention to be reinstated." [9] What is worse, according to such Comment: "Likewise, since the issuance on March 29, 1978 of the order of Executive Labor Arbiter (now NLRC Commissioner) Guillermo C. Medina denying respondent company's motion for the stay of execution, pending appeal, of the 'reinstatement' portion of the Labor Arbiter's decision, again not once did petitioner present himself to respondent company to effect his reinstatement; nor was there also any communication from petitioner expressing his intention to be reinstated." [10] Lastly, as far back as May 9, 1979, counsel for private respondent wrote to him saying that it was ready to effect his reinstatement, but he should report within fifteen days from receipt of the letter, failure to do so being considered "voluntary renunciation" of his right to be reinstated. [11] It was shown, however, that the letter was received by one Mrs. C. Reyes. While the above facts certainly cannot be considered a voluntary renunciation, this case having been filed as far back as April 25, 1979, still they can be considered in the determination of the amount of the back wages to be granted him.

WHEREFORE, the reinstatement of petitioner Ricardo Alzosa as ordered by private respondent is hereby affirmed but the appealed order is reversed insofar as it denied back wages. Accordingly, he is awarded back wages of one year. This decision is immediately executory.

Makasiar, Aquino, Concepcion Jr., Guerrero, Abad Santos, De Castro and Escolin, JJ., concur.

[1] According to Article II, Section 9, second sentence of the Constitution: "The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work. The State may provide for compulsory arbitration."

[2] Decision, Annex H to Petition, 10.

[3] Ibid.

[4] Ibid, 10-11.

[5] Comment, 3.

[6] L-24626, June 28, 1974, 57 SCRA 489.

[7] Cf. *Almira v. B. F. Goodrich Philippines*, L-34974, July 25, 1974, 58 SCRA 120; *Central Textile Mills v. National Labor Relations Commission*, G.R. No. 50150, May 3, 1979, 90 SCRA 9; *Genconsu Free Workers Union v. Inciong*, L-48687, July 2, 1979, 91 SCRA 311; *Acda v. Minister of Labor*, G.R. No. 51607, December 15, 1982; *Visperas v. Inciong*, G.R. 51299, December 29, 1982.

[8] G.R. No. L-45396, January 27, 1983.

[9] Comment of Private Respondent, 7.

[10] *Ibid*, 7-8.

[11] *Ibid*, 8.

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