

CENTRAL AZUCARERA DE LA CARLOTA, INC., PETITIONER, VS. HON. AMADO G. INCIONG, ACTING MINISTER OF LABOR, AND EMELITA T. DACANAY, RESPONDENTS.

G.R. No. 51194. August 19, 1982

Ponente: AQUINO, J.

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AQUINO, J.:

This is a labor case on termination of employment. Emelita T. Dacanay was employed as "console operator" in the electronics data and processing (IBM) department of Central Azucarera de la Carlota, Inc. She took a vacation leave from January 16 to 31, 1977. On February 1, she sent a telegram to Ben Aplaon, her immediate chief, requesting that her leave of absence be extended indefinitely because she was going to review for the board examination for cer-tified public accountants. She had exhausted her leave credits.

Because her services were badly needed, that request was denied by the company in a reply-telegram sent to Emelita on Feb-ruary 2. She was advised to return to duty on or before February 6. Emelita informed Ben Aplaon by long distance telephone that she could not return to duty.

Aplaon apprised the company's personnel manager that in accordance with the company's policy Emelita would be regarded as an AWOL, that her employment would be terminated and that her position would be considered vacant (p. 7, Rollo).

On February 8, 1977, the company's personnel manager filed with the Bacolod City regional office of the Department of Labor an application to terminate Emelita's services on the ground that she had been absent without leave since February 1. Emelita, single, was then thirty-two years old and had worked for the company for more than four years (p. 6, Rollo).

The assistant regional director in an order dated March 2, 1977 granted the application for clearance with the observation that Emelita did not oppose it despite the service upon her of a copy of the company's application.

On March 24, 1977, Emelita filed a motion for reconsi-deration on the grounds that she was not served with a copy of the application for clearance and that the company had been informed of her "illness" (p. 8, Rollo).

The company opposed that motion. It alleged that the assistant regional director acted on the application for clearance because Emelita was duly served by registered mail with a copy of that application; that Emelita was absent without leave, not on account of illness but because she was reviewing for the certified public accountants' examination, and that, although she knew that her services would be terminated, she did not bother to communi-cate with the company's officers (pp. 9-11, Rollo).

The regional director in his order of July 7, 1977 directed the reinstatement of Emelita with full backwages and without loss of seniority rights. He assumed that Emelita acted in good faith in not returning to duty on or before February 6, 1977 because it was only on February 9 or 10, 1977 when she allegedly re-ceived the denial of her request for an indefinite leave of absence. He also branded her dismissal as "drastically inhuman". He said that

she was "not guilty of absence without leave" (pp. 12-13, Rollo).

The company's motion for the reconsideration of the re-instatement order was denied. It appealed to the Secretary of Labor. Acting Minister Amado G. Inciong in his brief orders of July 5 and November 24, 1978 and April 16, 1979 dismissed the appeal for lack of merit.

On July 9, 1979, the company was served with a writ of execution to enforce the reinstatement order. The execution was suspended after the company filed a surety bond in the sum of P30 ,000 to answer for Emelita's backwages. It was only on July 12, 1979 when the company mailed to this Court its petition for certiorari.

There can be no question that Emelita disobeyed the directive that she should return to duty on or before February 6, 1977 and that she was absent without leave from February 1 to March 2, 1977 when she allegedly returned to duty but was not allowed to work because the assistant regional director had already approved the company's application to terminate her employment. She abandoned her job. The regional director erred in concluding that she was "not guilty of absence without leave".

The regulations of the company provide that an employee may be dismissed for at least six days of absence without leave within a calendar year (p. 22, Rollo).

Article 283 of the Labor Code provides that an employer may terminate an employment for "serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work" or for "gross and habitual neglect by the employee of his duties" or for "other causes analogous" thereto.

After taking into account the equities of the case and the conflicting interests of the employer and employee, we hold that respondent Emelita T. Dacanay should be reinstated without backwages.

WHEREFORE, the regional director's order is modified. The petitioner is ordered to reinstate immediately the private respondent to her former position or to a substantially equivalent position but without the obligation to pay her back compensation. No costs.

SO ORDERED.

Concepcion, Jr., Guerrero, De Castro, and Escolin, JJ., concur.

Barredo, (Chairman), I concur. It is not clear to me that respondent's absence constituted without disobedience. The equitable consideration on which the main opinion is based is justified.

Abad Santos, J., I vote to grant the petition. Private respondent was guilty of willful disobedience and abandonment of work. She does not deserve reinstatement.

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