

NEW FRONTIER MINES, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND CRISANTO H. BRIONES, RESPONDENTS.

G.R. No. 51578. May 29, 1984

Ponente: AQUINO, J.

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AQUINO, J.:

New Frontier Mines, Inc. seeks the nullification of the Labor Arbiter's decision, declaring illegal the dismissal of Crisanto H. Briones, its managerial employee, and ordering his reinstatement with backwages from the time of his dismissal until actually reinstated. The decision was affirmed by Commissioners Atienza and Quadra. Commissioner Villatuya dissented.

Crisanto H. Briones was employed by New Frontier Mines, Inc. in its Makati head office on January 30, 1974 at a starting salary of P650 a month (p. 76, Rollo), not at P1,000 a month as erroneously stated by the Labor Arbiter (p. 99, Rollo).

On February 2, 1976, Briones was promoted to accountant at P1,000 a month (p. 16, Rollo). In June 1976, he was assigned at the company's chromite project located in the mountain of Lagonoy, Camarines Sur, an isolated place. He functioned as chief accountant and administrative officer at P1,200 a month (p. 99, Rollo).

He performed multifarious duties. He acted as cashier, paymaster, purchase clerk, personnel officer, liaison officer and operations manager in the absence of the incumbent (p. 205, Rollo). By reason of his varied assignments, he was considered a managerial employee. His controversial performance in this job during the six-month period of June to December, 1976 led to his removal.

The Labor Arbiter found that Briones "committed several errors in his report of cash accountabilities covering the months from June to November, 1976" (p. 100, Rollo).

The project manager charged him with having incurred a cash shortage of P8,000, having illicit relations with a female housekeeper at the project site, drinking liquor every night and possible mis-appropriation of funds (Respondent's comment, p. 161, Rollo).

Jose C. Chung, then the company's general manager, on October 15, 1976 went to Lagonoy to make an on-the-spot check on Briones' accountability. Chung found a shortage of P3,800 which was a cash advance against Briones' salary (readjusted to P3,386.87) but which Briones considered only a "theoretical shortage" (pp. 49, 161-2, Rollo).

The Labor Arbiter found that on January 5, 1977 at a meeting in the Makati head office attended by the company president, vice-president, general manager and corporate secretary, Briones was directed to revise his cash position report for October and November, 1976, considering errors and unreported expenses incurred at the Lagonoy project not taken up in prior reports. He was advised that his accounts would be verified by an external auditor (p. 100, Rollo).

On January 15, 1977, Briones submitted his revised accounts. Then, from that date up to June 15, 1977 he did not report to the office. His excuse was that he wanted the auditor to have a free hand and he had to attend to his sick wife. Did he file a formal leave of absence? That is a disputed point in this case.

The Labor Arbiter said that it was his "strong feeling" that Briones' application for leave reached the company official concerned (p. 103, Rollo). However, the trouble is that, as observed by Commissioner Villatuya, Briones failed to sustain the onus of proving that he filed an application for leave, and, in the absence of proof, it would be wrong for the Labor Arbiter to assume that the application was granted. Rather, it should be concluded that he was absent without leave.

No documentary evidence was presented to prove that Briones was on leave from January 15 to October, 1977. Not even a duplicate of the letter, allegedly prepared for him by Tereso L. Javier, the general manager, wherein Briones was applying for leave, was presented in evidence. The action taken by the pre-sident on his supposed application for leave was not offered in evidence. How long the leave was supposed to last was not proven. No mention of his leave was made in his letter to Chung of September, 1977.

Briones merely claimed in his position paper of January 19, 1978 that the application for leave, after having been prepared by Javier, "was not submitted" to the president "as the latter had already left the office" (p. 56, Rollo).

Javier himself in his affidavit alleged that Briones "since January 15, 1977, without the knowledge and consent" of the company "failed to report for work for an unreasonable length of time without permission or notice to the company" (p. 50, Rollo).

According to Briones, in May, 1977, he dropped at the residence of Chung, the vice-president, to inquire about his employment status. Chung told him to go to the office on June 15. On that day, Briones reported to Javier. But Javier allegedly said that Chung should decide the case. It was only on September 26, 1977 when Briones wrote to Chung to ask him what action was taken on his revised accounts (pp. 205-206, Rollo).

Chung replied in a letter dated October 27, 1977. He apprised Briones that there was a net shortage in his accounts of P7,425.45 and that Briones was considered resigned in view of his failure to report for work since January 15, 1977. Said Chung:

"You were absent for several weeks without prior notice of leave or permission from the company. In view of your action of not reporting for work for a long period of time without permission, we have no alternative but to consider you resigned from the company" (p. 207, Rollo).

Briones filed his complaint for illegal dis-missal on November 9, 1977. The Labor Arbiter decided the case on July 31, 1978 on the basis of the position papers. As already stated, he found that Briones was a managerial employee and he ordered his reinstatement with backwages. Commissioners Atienza and Quadra affirmed that decision. The company filed its petition for certiorari on November 12, 1979.

The company's Lagonoy project ceased operation in 1978 due to the low price of chromite. Three hundred laborers working in the project were laid off. Briones' former position in the Makati office had been filled up (p. 33, Rollo). He is now 61 years old. He has been working in Saudi Arabia since the early part of 1980 (p. 344, Rollo).

We hold that the Labor Arbiter and Commissioners Atienza and Quadra acted with grave abuse of discretion in ordering the reinstatement with backwages of Briones, a managerial employee.

The Labor Arbiter erred in finding, on the basis of his "strong feeling" and assumptions, that Briones filed a leave of absence. The conduct of Briones and the concomitant circumstances showed that no such leave was filed.

As a managerial employee, the company had the right to terminate Briones' services "for lack of confidence" and abandonment of work (Policy Instructions No. 8, April 23, 1976, pp. 128-129, Vicente B. Foz, Labor Code, 1979 Edition, Philippine Law Gazette. See *Bondoc vs. People's Bank and Trust Company*, L-43835, March 31, 1981, 103 SCRA 599).

Therefore, the order for reinstatement is devoid of justification. However, as a matter of compassionate justice, Briones may be given three months' separation pay for 1974, 1975 and 1976 at the rate of P1,200 a month.

The motion of Briones dated August 21, 1983, that the instant petition be dismissed because of the expiration of 18 months from May 20, 1981, when the case was submitted for decision, is not well-taken. What was really meant in this Court's resolution of May 20, 1981, issued after the memoranda had been submitted, is that this case would be scheduled for deliberation to find out whether the necessary vote could be had.

The framers of the Constitution did not foresee that the numerousness or deluge of cases in this Court would render it impossible to schedule regularly the deliberation on pending cases.

Daily, this Court is swamped with a great number of (1) appealed civil and criminal cases, (2) petitions for certiorari, mandamus, prohibition, quo warranto and habeas corpus, (3) disbarment cases and (4) administrative matters and cases of judiciary personnel, aside from the cases undecided before the Constitution took effect.

WHEREFORE, the decision of the Labor Arbiter and the resolution of Commissioners Atienza and Quadra are reversed and set aside. The petitioner is ordered to pay three months' separation pay to Crisanto H. Briones. No costs. SO ORDERED.

Makasiar, (Chairman), Guerrero, Abad Santos, and Escolin, JJ., concur.

Concepcion, Jr., J., on leave.

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