

PACIFIC PRODUCTS/FORTUNA EMPLOYEES AND WORKERS ASSOCIATION – TUPAS AND EDIPOLO TORRELINO, PETITIONERS, VS. PACIFIC PRODUCTS, INC., AND NATIONAL LABOR RELATIONS COMMISSION, RESPO...

G.R. No. 51592. September 18, 1987

Ponente: PARAS, J.

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PARAS, J.:

Petitioners question the resolution dated April 19, 1979 of respondent National Labor Relations Commission (NLRC for short) which modified the decision of Labor Arbiter Ceferina J. Diosana in Case No. RB-IV-10722-77. The questioned resolution in effect upheld the dismissal of petitioner Edipolo Torrelino from his position as stock clerk in respondent-company, but ordered the payment to him of separation pay consisting of one-half month salary for every year of service.

It appears from the records that petitioner Edipolo Torrelino an employee of respondent company for a period of more than 10 years, was a stock clerk with a salary of P750.00 a month at the time that respondent company applied for clearance to terminate his employment effective February 23, 1977 allegedly on grounds of vending cigarettes in the premises of the company, tampering of the company's payroll and collusion in illegal acts which are all in violation of company rules and regulations. Edipolo Torrelino opposed the application alleging that he had not committed the acts attributed to him and that his projected dismissal was a scheme of the company to scuttle the union of the employees of which he was the president. After due hearing, the Labor Arbiter as earlier stated rendered a decision giving due course to the application and ordering the dismissal of Edipolo Torrelino and the payment of respondent company of separation pay to Edipolo Torrelino. Both parties appealed the decision to the NLRC which upheld the same with modification, hence the present petition for certiorari, petitioner alleging that both the Labor Arbiter and the respondent Commission committed a grave abuse of discretion in granting the clearance application and ordering the dismissal of the petitioner.

In his memorandum, petitioner Edipolo Torrelino submits the following:

- I. The charge against him is the first;
- II. No tampering of company payroll was committed by him;
- III. The acts committed by him do not warrant his dismissal.

Petitioner's contentions hold water.

No less than the Labor Arbiter declared in her decision as affirmed by the NLRC that:

"In the case of Edipolo Torrelino, the charge against him is only the first offense committed during his long employment with respondent." (p. 22, Rollo)

Private respondents dispute this alleging that the vending of cigarettes by petitioner Edipolo Torrelino had happened not only once or twice but several times within one year, in violation of the rules of the respondent company, and punishable by discharge from service. Petitioner admits he was selling cigarettes for a year or so openly inside the company premises but not in the true sense of the word during office hours, that the cigarettes were placed inside his drawer and buyers got them freely from the drawer, thereafter leaving the corresponding receipt or chit or vale inside the drawer; that he has no participation in the preparation of the payroll as well as in effecting the deductions; that the selling of cigarettes in the manner stated above was not unknown to the top management people like Messrs. Villareal, Parlan, Pascual, and that none of them ever called his attention to the fact that it was improper and not sanctioned by the company rules and regulation; that their acquiescence in other words was a tacit approval of the manner the cigarettes had been sold inside the premises, hence, it could be termed as proper (p. 4 Decision, p. 18 Rollo). Petitioner was given notice of such violation for the first time only thru a company memorandum dated February 8, 1977, which was followed immediately by the application of the respondent company for clearance with the labor Arbiter to terminate petitioner's employment in the company. No evidence was shown that petitioner continued to execute the acts charged despite the notice given to him.

As can be gathered from the evidence, petitioner Edipolo Torrelino's Employment Service Record for more than 10 years was clean without any indication that he had committed violations or abuses against the company, his superiors, or his co-employees until his attention was called to the questioned violation. Petitioner Edipolo Torrelino alleges that it was only in early 1977 that his otherwise good and harmonious relationship with his superiors became hostile when petitioner as the union president, together with some other union officers denounced the illegal activities of company officers to the company President, coupled with the union's filing of cases against the management. Both the public and private respondents claim that the act of vending cigarettes inside company premises was of such gravity that the herein petitioner should be held responsible for inducing his co-employees to smoke, thus endangering lives and company property. Smoking within the prohibited area is however an entirely different offense from vending cigarettes inside company premises. There is no single evidence on the record that an employee was ever caught or charged with smoking within the prohibited area. It appears now that the respondents wanted to charge the petitioner with more serious offenses based on mere assumptions and remote probabilities which in fact never occurred.

The petitioner does not deny the fact that some of the payments of the cigarettes were collected through the payroll clerk by means of deducting the amount due from the salaries of the employees concerned. However, the same was effected with the express consent of the said employees themselves. The question now is whether the said deduction constitutes tampering of company payroll. We rule that tampering of company payroll is entirely different from illegal deductions. Private respondents contend that the petitioner indirectly committed the offense of tampering with the company's payroll because the collection of the value of the cigarettes sold on credit was done thru the use of the payroll. Private respondents claim that thru the said deduction, the company was prejudiced. However petitioner contends that this claim was mainly based on assumptions without presenting concrete evidence to show the extent of prejudice. Unless there is a clear and convincing proof of the extent of damage suffered by the company, if there was any, it is impossible to assess the liability of the petitioner (that is, assuming that he is guilty).

Moreover, if the deduction was indeed illegal (although there is no concrete proof that there is a provision in the company rules and regulations to this effect), why penalize only the petitioner and exclude the payroll master who was exonerated by private respondents by stating that the payroll master, unwittingly, could have effected the wishes of the petitioner blindly, in the belief that these deductions could be made to appear as union dues and other assessments provided for in the collective bargaining agreement. Again, this statement is a mere assumption without adequate evidence to support it.

In resume, We believe that the acts committed by petitioner (being a first offender) do not warrant the drastic remedy of dismissal. As provided for in the company rules and regulations, presented by petitioner in his memorandum, the penalty for vending, soliciting, engaging in usurious activities is a written reprimand for the first offense, six (6) days suspension for the second offense, and discharge for the third offense. Nothing specific however is provided with respect to deductions from salaries with the express consent of the employees.

WHEREFORE, premises considered, the questioned resolution is hereby SET ASIDE and respondent company Pacific Products, Inc. is hereby ORDERED to REINSTATE the herein petitioner Edipolo Torrelino to his former position with three (3) years' backwages and without loss of seniority rights and privileges.

SO ORDERED.

Yap, (Chairman), Melencio-Herrera, Padilla, and Sarmiento, JJ., concur.

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