

CANLUBANG SUGAR ESTATE, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND TRANQUILINO O. NICDAO, RESPONDENTS.

G.R. No. 52325. November 15, 1982

Ponente: AQUINO, J.

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AQUINO, J.:

This is the case of Captain Tranquilino O. Nicdao whose employment as plane pilot was terminated by the Canlubang Sugar Estate (after having rendered service for about twenty months) because the plane was to be sold, and whom the Labor Arbiter granted P3,500 as one month's separation pay but whom the National Labor Relations Commission granted separation pay equivalent to his backwages for eighteen months amounting to P63,000.

So, the issue is whether Nicdao should be granted P3,500 or P63,000 as severance pay or dismissed without any termination compensation whatsoever, as prayed for by the employer.

Nicdao was hired on December 6, 1974 as pilot for the company's Cessna plane, Golden Eagle 421-B RP-C 7524, at a monthly salary of P3,500. He functioned as an executive pilot in the company's aviation department.

After working for more than sixteen months, Nicdao brought the Cessna plane to Singapore for repair. It was grounded for more than five months. During that period Nicdao was idle. After the plane was brought back to the Philippines by another pilot, the company decided to sell it.

According to the company, during the time that Nicdao operated the plane, he committed some errors or improper acts, such as flying when the weather was bad, making test flights without the company's authorization and ignoring instructions when he brought the plane to Singapore.

Acknowledging his mistakes, Nicdao made the following written apology to his superior:

"Sir: Please accept my apology for being the cause of your problems and troubles in the past months.

"With the kindness you have shown me in the past, I regret my mistakes and I am too embarrassed to personally approach you when I can feel that my presence is not wanted.

"My only intent was to put some sense into the head of Ely Yango.

"I hope you can believe me that the past painful events will not happen again. — Nick" (p. 31, Rollo).

In a letter dated August 2, 1976, the head of the aviation department advised Nicdao that in view of the management's decision to sell the Cessna plane, which had been indefinitely grounded, Nicdao's services as pilot were no longer needed. Nicdao received that dismissal notice on August 4 (p. 32, Rollo).

In his letter dated August 9, he inquired from his superior about the effectivity of his dismissal. He was informed that his separation would take effect on September 4, 1976 or one month from his receipt of the notice terminating

his services. He was told to report to the office for his clearance and separation pay (pp. 33 and 34, Rollo).

On August 28, 1976, he turned over to the aircraft mechanic the things and properties which had come into his possession as company pilot (p. 13, Rollo).

On September 28, 1976 the company, with notice to Nicdao, filed with the Department of Labor an application for clearance to terminate his services. He did not oppose the application.

Seventy days later, or on December 7, 1976, Nicdao filed with the Department of Labor a complaint against the company for illegal dismissal. In answer to that complaint, the company cited the sale of the plane and loss of trust and confidence as the grounds for Nicdao's dismissal.

After the submission of position papers, affidavits and documentary evidence, the Labor Arbiter in a decision dated January 31, 1978 found Nicdao's dismissal to be justified because he had forfeited the trust and confidence of the company allegedly due to unauthorized flights, disobedience and insubordination and because the plane had been sold to the National Grains Authority.

The Labor Arbiter found that the negotiations for the sale of the plane to the NGA had been terminated, that the plane had been delivered to Captain Abrenica of the NGA on October 30, 1976 and that the NGA was only awaiting Presidential authorization to consummate the sale.

As a matter of compassionate justice, the Labor Arbiter ordered the company to pay Nicdao separation pay equivalent to his salary for one month or P3,500, less whatever amounts he might be owing to the company (p. 40, Rollo).

Nicdao appealed to the NLRC which in a decision dated August 22, 1979 ruled that the dismissal was not justified. However, because of his strained relations with the company, he could not be reinstated. So, the NLRC ordered the company to pay Nicdao the sum of P63,000 which is equivalent to his salary for eighteen months (p. 46, Rollo). (Nicdao has been employed by the Ayala Corporation as pilot since October 1, 1978.)

The NLRC disagreed with the Labor Arbiter's conclusion that Nicdao was a managerial employee. It ruled that he was a rank-and-file employee. It doubted that the sale of the plane had been consummated because there was no deed of sale. It held that Nicdao's dismissal was premature, that he was not guilty of insubordination and disobedience and that the alleged unauthorized flights were "negligible offenses." (The plane was eventually sold, not to the NGA, but to Shoemart, Inc. in August, 1980, p. 112, Rollo.)

The company filed in this Court on May 5, 1980 a petition for certiorari wherein it assailed the NLRC decision. It contends that Nicdao's employment was terminated for a just cause, that the company complied with the clearance requirement under the Labor Code and that Nicdao was a managerial employee.

Paragraphs (a) and (f) of Article 283 of the Labor Code provide that "an employer may terminate an employment without a definite period" by reason of "the closing or cessation of operation of the establishment or enterprise" or for some cause analogous thereto.

We hold that the company's decision, arrived at in good faith and in the ordinary course of business, to sell the Golden Eagle, the Cessna plane specifically assigned to Nicdao, after it had been grounded for more than five months, during which time Nicdao was idle, is analogous to the closure or cessation of a business enterprise. It was a sufficient justification for terminating Nicdao's employment which was not for a definite period.

The employer could not be forced to continue operating the plane just to accommodate Nicdao or to maintain him in his job as pilot. Nicdao must have known that his job depended on the continued operation of the plane. If there was no more plane, no pilot would be needed and his job would become ipso facto nonexistent.

Hence, we agree with the Labor Arbiter that there was a lawful cause for the termination of Nicdao's services. But the company should have secured clearance to terminate Nicdao's services at least ten days before September 4, 1976. As already stated, it filed its application only on September 28, 1976.

There is no legal and factual justification for the NLRC's award of backwages amounting to Nicdao's salary for eighteen months when he did not render any service whatsoever. He had, in effect, been retired due to the sale of the Cessna plane or the discontinuance of its operation.

WHEREFORE, the decision of the NLRC is set aside. The Labor Arbiter's decision granting Nicdao separation pay of P3,500, his salary for one month, is affirmed. No costs.

SO ORDERED.

Makasiar (Chairman), Concepcion Jr., Guerrero, Abad Santos, De Castro and Escolin, JJ., concur.

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