

ROMEO OLIVA, PETITIONER, VS. THE NATIONAL LABOR RELATIONS COMMISSION AND PHILIPPINE CARPET MANUFACTURING CORPORATION, RESPONDENTS.

G.R. No. 57865. April 28, 1983

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Philippine Carpet Manufacturing Corporation applied for clearance to terminate the employment of Romeo Oliva for alleged violations of its Rules and Regulations. The application was granted by a Labor Arbiter whereupon Oliva appealed to the National Labor Relations Commission which affirmed his dismissal from the corporation albeit with an "award [of] separation pay equivalent to half-month salary for every year of service as a penalty" because the corporation barred him from work on April 13, 1978, whereas the application for separation was filed only on May 5, 1978.

Romeo Oliva has asked Us to review his case and thereafter to order his reinstatement with back wages and retention of seniority. We asked the respondents to comment on the petition which they did. Considering the comments as answers, We give due course to the petition and grant the relief prayed for upon the recommendation of the Solicitor General even as he represents the National Labor Relations Commission.

The factual background is given in the Comment of the Solicitor General as follows:

"Petitioner Romeo Oliva was employed by respondent company on September 25, 1973 as Utility Man. In 1974, he was promoted to the position of Assistant Machine Operator and later as Machine Operator. On September 1, 1975, petitioner was again promoted to the position of Group Leader and on March 1, 1976 he was promoted to the position of Foreman with thirty four (34) men under him (p. 6, decision, dated December 3, 1979; Annex B, Petition).

"On April 5, 1978, at around 3:00 o'clock in the afternoon, Bert Cabatu, petitioner's immediate supervisor verbally instructed him to gather men who would want to render overtime work (p. 25, rec.). Petitioner was able to convince eight (8) of the thirty-two (32) men under him to render overtime services and prepared the overtime authorization slip (pp. 23-24, rec.). Later, however, the Supervisor instructed the Group Leader to delete his and petitioner's names since there were already Supervisory Personnel who would man the overtime work (p. 62, rec.). Informed of the change, petitioner tore the overtime authorization slip in the presence of his co-workers and group leader Genaro Melchor, uttering "Sinusubukan yata niya ako." (p. 62, rec.).

"On April 11, 1978, Sales/Plant Manager Benjamin Abarca called petitioner regarding the said incident (p. 24, rec.). Petitioner was again summoned on April 13, 1978 by the Personnel Manager, Anacleto Castro who verbally informed him that his last working day was on said date because the Management had decided to dismiss him because of the said incident (p. 24, rec.).

"On April 15, 1978, when petitioner reported for work, his time card had already been taken by the personnel manager's office and his name was one of those included in the list of separated personnel given to the Chief of the Security, Gerardo Alvaran (p. 15, rec.).

"On several occasions, thereafter, petitioner was offered by private respondent company to resign voluntarily (pp. 24, 28, rec.).

"Finally, on April 24, 1978, petitioner filed with the then Department of Labor a complaint for illegal dismissal and non-payment of vacation leave, premium pay for holiday and rest day (p. 2, rec.).

"On May 5, 1978, private respondent filed an application for clearance to terminate petitioner's services for having violated the following rules and regulations of the company, to wit:

"1. Rule No. 27—Provoking, instigating or fighting within the company premises or within a radius of 300 meters from the company perimeters.

2. Rule No. 39.—Insubordination. Refusal to comply or obey orders or instructions of superiors.

3. Rule No. 40.—Use of abusive and dirty language directed against and in gross disrespect to supervising personnel or officers of the company.

(p. 2, rec.).

"Thereafter, the same was certified for arbitration (Order dated September 19, 1978).

"After hearing, a decision was rendered by Labor Arbiter Flavico P. Aguas, granting the clearance applied for by private respondent company (Annex B, Petition).

"Not content with the said decision, herein petitioner appealed to the National Labor Relations Commission which rendered a decision modifying that of the Labor Arbiter by awarding separation pay equivalent to half-month salary for every year of service as a penalty for private respondent's violation of the requirement as to the filing of application to terminate before dismissing an employee (Annex A, Petition).

"Not content with the award, herein petitioner filed the instant petition."

The principal issue in this appeal is whether or not the petitioner violated any of the private respondent's rules so as to justify his separation from employment. In the light of the facts, the answer is obviously in the negative.

Rule 27 on provoking, instigating or fighting within the company premises was not violated. The act of the petitioner in tearing the Overtime Authorization Slip and in uttering "Sinusubukan yata niya ako" cannot by any stretch of the imagination be construed as "provoking, instigating or fighting." It must be borne in mind that the petitioner had prepared the slip himself and after he was told to delete some names, he saw no further use for it.

Neither did the petitioner commit insubordination (Rule 39). He did not refuse to comply or obey orders or instructions of his superiors. On the contrary, when the petitioner was ordered to delete his name from the overtime slip, he did so in a categorical manner - he tore the slip. The petitioner was told not to work overtime - he did not. How then can it be said that he was guilty of insubordination?

The petitioner uttered the words "sinusubukan yata ako niya." It is claimed that he thereby used abusive and dirty language. Even by genteel Victorian standards the words cannot be categorized as abusive much less dirty. Perhaps they were slightly disrespectful but not sufficiently so to bring them within the ambit of Rule 40.

The petitioner was effectively dismissed on April 13, 1978, whereas the application for clearance to dismiss him was filed only on May 5, 1978. He was, therefore, illegally dismissed (Sec. 1, Rule XIV, Book V of the implementing Rules and Regulations); he is entitled to reinstatement and payment of his backwages (Sec. 2, *ibid.*) which Our jurisprudence limits to not more than three years.

WHEREFORE, the petition is granted; the decision of the National Labor Relations Commission is hereby set aside; the private respondent shall reinstate the petitioner to his former or equivalent position with payment of

backwages for three years starting from April 13, 1978. Costs against the private respondent.

SO ORDERED.

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

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