

BAGONG BAYAN CORPORATION, REALTY INVESTORS & DEVELOPERS, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, ANTONIO A. RABE AND ERNANI T. MAGPUSAO, RESPONDENTS.

G.R. No. 61272. September 29, 1989

Ponente: REGALADO, J.

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REGALADO, J.:

Private respondents Antonio A. Rabe and Ernani T. Magpusao were regular employees of petitioner Bagong Bayan Corporation, a domestic corporation engaged in the business of operating and managing a hotel known as El Grande Tropical Palace Resort Hotel located in Parañaque, Metro Manila.

On April 11, 1980, private respondents, who worked as dishwashers or stewards in the hotel, were placed on preventive suspension on the basis of the sworn statement of one Milo Mitra implicating them, together with Leopoldo C. Ramos and Juanito S. Baldonado, as being involved in an alleged pilferage in the hotel.

The supposed pilferage was said to have been discovered on April 8, 1980 by a security guard who immediately reported the same to the petitioner's security manager, Eufemio R. Musa. The padlock of the kitchen of the hotel was allegedly destroyed and several pieces of plates were missing. The incident was referred to the police for a proper investigation. Two days after the discovery, Milo Mitra, who at that time was an employee of the hotel's contractor agency, Top Rate Agency, and assigned as janitor in the hotel, was apprehended by the police in connection with the loss.

While in police custody, Mitra executed a handwritten statement, dated April 10, 1980, stating the alleged complicity of private respondent Antonio A. Rabe who was referred to as "Tony". The statement was subsequently sworn to on the next day before Investigating Fiscal Corazon C. Chaves of Las Piñas, Metro Manila. It was during this investigation when the four persons, who were charged in the criminal complaint filed thereafter, were implicated. These allegations were reiterated by Mitra in another handwritten statement executed and sworn to before Assistant Provincial Fiscal Rodolfo Mateo during the preliminary investigation on June 30, 1980.

In the meantime, during the pendency of the preliminary investigation in the fiscal's office and after the suspension of private respondents, petitioner filed on April 24, 1980 an application with the then Ministry of Labor and Employment for clearance to terminate their services. Reacting to such application, private respondents filed on May 15, 1980 a complaint for unfair labor practice and illegal dismissal before said ministry in the National Capital Region. The case was docketed as Case No. AB-0-6704-80 and assigned to Labor Arbiter Jesus C. Cuenca.

After the respective position papers were filed, the labor arbiter rendered a decision, dated October 28, 1980, ordering petitioner corporation to reinstate both private respondents to their former positions without loss of

seniority rights and privileges and with corresponding backwages from April 11, 1980, the date of their preventive suspension, up to the time of their actual reinstatement. The evidence presented were declared to be insufficient to substantially prove the complainant's guilt. On the other hand, the charge of unfair labor practice was dismissed, with the observation that no specific acts of the employer tending to interfere with the employees' right to self-organization was pointed out by the complainants therein.[1]

From this decision, petitioner seasonably appealed to respondent commission. During the pendency of said appeal, the investigating fiscal, in his resolution dated June 4, 1981, recommended that the complaint against all those implicated by Milo Mitra be dropped since no probable cause existed against them.[2]

Thereafter, public respondent dismissed the appeal of petitioner, affirming the findings of the labor arbiter that there was no basis to suspect that the respondents were involved in the theft.[3] Furthermore, the commission pointed out what it considered as incredible and impossible averments in the sworn written statements submitted before the fiscal's office, thus:

"x x x Mitra averred that after coming out from work on 10 April 1980, at about 1:00 o'clock in the afternoon, complainant Tony Rabe met him and asked him to bring a box to the house of Carol located at the CAA; and that accordingly he brought the box to the house of Carol upstairs, but he did not know the contents of the box. Yet, per the 'Sinumpaang Salaysay' of Patrolmen Artemio Trinidad, Jaime Avila and Genaro Osias, Milo sold the loot consisting of kitchen wares (sic) to different houses. Moreover, in relation to the averments contained in the joint affidavit of the three policemen, the averment of Milo Mitra cited above is not only incredible but also impossible. Thus, according to the policemen, they apprehended the persons implicated by Milo Mitra at about 11:30 o'clock in the morning of 10 April 1980; while according to Mitra, he brought the box containing the kitchen wares (sic) recovered by the policemen to the house of Carol at about 1:00 o'clock in the afternoon of 10 April 1980. This means that the act of apprehension preceded the act of pilferage, which is an impossibility. Obviously, therefore, Milo Mitra implicated the individual appellees, one of whom (Ernani Magpusao) is even a recipient of a commendation for honesty, for the sole purpose of absolving himself."[4]

Petitioner's motion for reconsideration was denied, resulting in the filing of the present petition for certiorari on August 3, 1987. Submitted therein for our consideration were petitioner's contentions that (1) public respondent committed grave abuse of discretion in finding that petitioner had absolutely no basis in suspecting the involvement of private respondents in the theft of its properties despite substantial evidence to the contrary, and (2) there was grave abuse of discretion in holding petitioner liable for backwages despite the finding that petitioner never committed any unfair labor practice.[5]

Although on August 18, 1982, we initially issued a temporary restraining order[6] to prevent the enforcement and/or carrying out of the questioned resolution, this petition was dismissed in our resolution of May 18, 1983 for lack of merit and said restraining order was consequently lifted.[7] However, upon motion of petitioner, the Court, in a resolution dated September 19, 1983, set aside said resolution of May 18, 1983 which dismissed the petition for certiorari and lifted the restraining order and gave due course to the petition.[8]

Petitioner maintains that the statements executed by Milo Mitra and the police investigators constitute substantial evidence against private respondents and that the dismissal of the criminal charge does not necessarily exculpate private respondents from the cause for which they were sought to be dismissed, that is, loss of confidence. Parenthetically, it will be noted that while the present case involved preventive suspension, the indefiniteness thereof makes it tantamount to termination and should be treated accordingly.

It is obvious that the present controversy, as formulated by the parties, is centered on the presence or absence of substantial evidence warranting the dismissal of private respondents. What is actually involved is the determination of whether or not the evidence presented constitute more than a mere scintilla of relevant evidence

which a reasonable mind might accept as adequate to support a conclusion, even if other equally reasonable minds might conceivably opine otherwise.[9] Only if the evidence is inadequate to satisfy the test of reason may we then consider the issue of whether there was grave abuse of discretion which constitutes the ground for petitioner's present recourse.

We are convinced that petitioner miserably failed to satisfy the requisite quantum of proof. Its continued reliance on the statement of the accused Milo Mitra obviously rests on an infirm foundation since the investigating fiscal himself disbelieved or accorded insignificant weight thereto when he recommended the dismissal of the criminal complaint against herein private respondents. The position of the fiscal that no probable cause existed against private respondents is not hard to appreciate. As correctly pointed out by respondent commission, there were serious inconsistencies in said statements of Mitra, aside from the fact that coming from a polluted source, there is ample reason to distrust the same.

A large body of precedents supports the recognition of the right of an employer to dismiss an employee on the ground of loss of confidence.[10] Nevertheless, the exercise of such prerogative must be actuated by and based on just and lawful causes, duly substantiated, otherwise it could easily be used as a pretext to reduce to a barren form of words the constitutional guarantee of security of tenure.[11] The force of this requirement, derived as it is from such constitutional protection, is but a manifestation of our consistent adherence to the policy of promoting social justice. Thus, any arbitrary termination of employment must invariably be struck down as an attack on such constitutional precepts.

This continued vigilance on the part of the Court, as well as the administrative bodies concerned, assumes further significance since a prior clearance to terminate the services of an employee, which was a policy requirement at the inception of this controversy, is today no longer required. Under Section 13 of Batas Pambansa Blg. 130, which took effect on August 21, 1981, the employer is no longer bound to secure clearance from the Department of Labor and Employment before the services of an employee can be terminated.

The finding that there was no unfair labor practice does not detract from the illegality of the dismissal of private respondents. Neither would petitioner's allegation of good faith excuse it from the consequences thereof. Although in the cases relied upon by petitioner,[12] good faith excused the employers involved from the payment of backwages, special circumstances supporting the finding of good faith were present therein. The same can hardly be said in the present case.

Consequent to the finding of absence of sufficient justification to terminate the services of private respondents, they should be reinstated to their former positions without loss of seniority rights and with backwages, subject to the present jurisprudential policy on the conditions and extent thereof.

WHEREFORE, the petition at bar is DISMISSED for lack of merit. Petitioner is hereby ORDERED to reinstate private respondents to the last positions they occupied or any other similar position of the same category and with the same compensation, without loss of seniority rights. Should such reinstatement not be feasible due to supervening causes, petitioner shall pay private respondents separation pay equivalent to one (1) month's salary for every year of service computed at their respective rates of pay at the time their services were terminated. Petitioner is FURTHER ORDERED to pay private respondents backwages at the same rates of pay, without qualification and deduction, not exceeding three (3) years.

The temporary restraining order issued in this case on August 18, 1982 is hereby LIFTED. This decision is immediately executory.

SO ORDERED.

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

[1] Rollo, 38.

[2] Ibid., 149.

[3] Ibid., 47.

[4] Ibid., 47-48.

[5] Ibid., 11.

[6] Ibid., 63-64.

[7] Ibid., 101-103.

[8] Ibid., 129.

[9] Lansang vs. Garcia, 42 SCRA 448 (1971).

[10] Atlas Consolidated Mining and Development Corporation vs. National Labor Relations Commission, G.R. No. 75755, Nov. 24, 1988, and cases cited therein.

[11] Central Textile Mills, Inc. vs. National Labor Relations Commission, et al., 90 SCRA 9 (1979). See also Bustillos vs. Inciong, et al., 120 SCRA 262 (1983).

[12] Baron, et al., vs. Court of Industrial Relations, et al., 8 SCRA 579 (1963); San Miguel Corporation vs. Secretary of Labor, 64 SCRA 56 (1975); Itogon-Suyoc Mines, Inc. vs. National Labor Relations Commissions, et al., 117 SCRA 523 (1982).

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