

## **A. MARQUEZ, INC., PETITIONER, VS. DEPUTY MINISTER VICENTE LEOGARDO, JR. AND CECILIO APOLINARIO, RESPONDENTS.**

*G.R. No. 63227. March 15, 1984*

Ponente: GUTIERREZ, JR., J.

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### **GUTIERREZ, JR., J.:**

This is a petition for review of the orders of the Ministry of Labor dated July 14, 1981 and January 11, 1983 sustaining the complaint of Cecilio Apolinario for illegal dismissal against petitioner A. Marquez, Inc. filed before the Office of the Regional Director, Ministry of Labor, Region IX, City of Zamboanga.

Cecilio Apolinario had been employed as driver of a cargo truck of petitioner A. Marquez, Inc. working almost daily for more than three years with a daily wage of P12.00 when on April 25, 1978, he was allegedly illegally dismissed by his employer. In his complaint, Mr. Apolinario alleged the following circumstances which led to his illegal dismissal:

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"3. That on April 25, 1978 without sufficient cause, respondent did not allow complainant to drive the cargo truck he used to drive, instead gave to another driver, despite plea from complainant to drive;

"4. That on the following day, complainant came to see the manager but the latter refused, alleging that he could not drive owing to his denial before the police of the alleged theft of 3 empty shells for Coke."

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On October 3, 1978, the complaint was dismissed because of the failure of Mr. Apolinario to appear at the hearing scheduled on August 1, 1978. Upon Apolinario's motion for reconsideration, the dismissal order was set aside and the complaint reinstated. The complaint was then referred to a hearing officer for investigation.

At the hearing on the merits of the complaint, Apolinario presented the following arguments to substantiate his stand that he was illegally dismissed by the petitioner:

"x x x first, respondent had not filed any application for clearance to terminate his services; second, no investigation was ever conducted by respondent; and third, the alleged theft of empty coke shells cannot be a ground for dismissal. He argued that the letter of the accountant of the Zamboanga Coca-Cola plant used as basis for his dismissal, should not have been given weight by respondent, especially in view of his three years of services. He maintained that anybody could have placed the coke shells under the chassis of the truck he was driving, either jokingly or intentionally. He contended further that the absence of any intent on his part to steal is evident from the circumstances of the case. He explained that the Coca-Cola plant is several kilometers away from the wharf, his destination point at the time he was driving, and that if he really had the intention to steal the empty shells, he could have hidden them along the way. Moreover, he pointed out that the place where the empty shells were unloaded was full of workers at the time."

On the other hand, the petitioner whose main business was the hauling of empty Coca-Cola bottles from the

Zamboanga City wharf to the Coca-Cola Plant at Tetuan, Zamboanga City denied the illegal dismissal charge. The petitioner maintained that its refusal to let Apolinario drive its cargo truck was due to the ban imposed against him by the San Miguel Corporation to enter the Coca-Cola Plant premises. According to the petitioner, Apolinario was found to have been guilty by the Coca-Cola management of theft consisting of one loose PS shells and two loose RS shells or cases of empty coke bottles as a result of which the accountant of the Zamboanga Coca-Cola Plant wrote a letter to the petitioner informing it that Mr. Apolinario was banned from entering the Coca-Cola Plant premises because of the misdemeanor.

On the basis of the "Report and Recommendation" submitted by the hearing officer, the Regional Director in an Order dated January 26, 1978 dismissed the complaint based on the following grounds: "(1) that complainant after he was not allowed to drive, voluntarily left his employment, and seek (sic) employment with the Zamboanga Stevedores and Dockhandlers Corporation." The said order was appealed by Mr. Apolinario to the Minister of Labor. In an Order dated July 14, 1981, Deputy Minister Vicente Leogardo, Jr. acting in behalf of the Minister of Labor set aside the questioned order and declared that the petitioner was guilty of illegal dismissal vis-a-vis Apolinario. Hence, Armando Marquez, the manager of the petitioner company was directed "to immediately reinstate Apolinario x x x in his former position with full backwages, without loss of seniority rights and with payment to him of all other applicable benefits."

On a motion for reconsideration filed by the petitioner and in view of the certification by the assistant city treasurer of Zamboanga City that petitioner A. Marquez, Inc. managed by Armando Marquez had "retired" its business license since January 3, 1980, the Deputy Minister issued an Order dated January 11, 1983 modifying the July 14, 1981 Order as follows:

"x x x That respondent grant separation pay to complainant equivalent to one-half month pay for every year of service; and (2) that respondent pay the backwages of the complainant from the time he was dismissed on April 25, 1978 as found in the Order of this Office dated July 14, 1981 until January 3, 1980 when respondent's business license was retired."

The Deputy Minister of Labor's ruling was due to the petitioner's failure to file the required clearance requirement from the Ministry of Labor compounded by the petitioner's failure to personally investigate the theft charge against Mr. Apolinario by the San Miguel Corporation. Hence, the Deputy Minister stated:

"We rule for complainant. It is clear that he was dismissed without the requisite clearance. This is impliedly admitted by respondent when it simply did not allow complainant to drive anymore on the basis merely of the letter of Coca-Cola plant's accountant. But prescinding from the procedural aspect of the case, we do not see any justification for complainant's dismissal. While it is true that there was a report on complainant's admission of guilt in an attempted theft of Coca-Cola shells and his subsequent banning from the premises of the bottling company, that report alone is not a sufficient basis for his outright dismissal, effect-ed quite effectively through respondent's refusal to give him work. He should have been investigated first. We are not convinced of complainant's culpability in so serious a charge as attempted theft, especially when all that we have at hand is the accountant's generalized report on the incident. We find respondent to have acted on the report precipitately and, worse, to have denied complainant the elementary courtesy of an investigation."

We are constrained to set aside the orders of the respondent Ministry. The orders ignore the circumstances of the situation and penalize the employer for acts over which it has no control. The petitioner's assigning another driver to the cargo truck bound for the Coca-Cola Plant premises instead of Mr. Apolinario was brought about by the San Miguel Corporation ban against Mr. Apolinario prohibiting him from entering the Coca-Cola Plant premises. In the face of such a prohibition, the petitioner could not allow Mr. Apolinario to drive its cargo truck because it would not have been allowed to enter the Coca-Cola Plant. As the Regional Director stated in his order dated January 26, 1978 "x x x It would be a stupid gesture for respondent to let complainant continue handling when he

is banned from entering the Plant Compound."

The Deputy Minister's suggestion for a personal investigation by the petitioner as regards the theft charge against Apolinario is impractical under the circumstances. It would have served no purpose at all vis-a-vis the ban imposed on Apolinario. On the other hand, Mr. Marquez might have lost his entire business with the Coca-Cola Plant. A finding of the petitioner that Apolinario was not guilty as charged would not be binding on the San Miguel Corporation since Apolinario was not an employee of San Miguel Corporation. More-over, if he initiated the suggested investigation, the petitioner could have prejudiced its hauling contract and the jobs of all other drivers for as far as San Miguel Corporation was concerned, Mr. Apolinario had already been investigated and found guilty of theft as a result of which he was banned from entering the Coca-Cola Plant. The fact that the petitioner closed its business during the pendency of this case shows it could not have stood up against the giant San Miguel Corporation. It would have been business suicide for the petitioner to initiate the suggested investigation.

In *M.F. Violago Oiler Tank Trucks v. The National Labor Relations Commission, et al.* (117 SCRA 544), we ruled:

"A careful consideration of the records before Us shows that insofar as respondents Amado Mariano, Ricardo Pasco, Teofilo de Leon, and Zosimo Sacdalan are concerned, the petitioner has been made accountable for a predicament where it had no participation and to answer for circumstances over which it had no control. Justice, fairness, and due process dictate that the questioned decision be modified.

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"It was asking too much to have Violago produce the results of a formal investigation by Petrophil that the private respondents were found guilty of cheating in receiving oil products from Petrophil depots and delivering the same to various delivery points. Petrophil had no interest in expending time, money, and effort in conducting a full-fledged investigation. It was wary of certifications that resulted in suits against its officials. The complainants are not its employees. As-summing that Violago and its four drivers could have demanded a formal investigation under the arrangements with Petrophil and, if refused, gone to court, Violago must have felt that it would be risking its entire hauling contract with Petrophil if it went to that extent. Pressed for the kind of evidence required by the respondent commission from Violago, Petrophil may have cancelled the entire contract because of the formally proved dishonesty of a few. Not only four drivers but all employees and the entire fleet would have been idled. As a matter of fact, an affidavit of three constables of the Constabulary Highway Patrol Group (CHPG) and a report of investigation shows that respondent Zosimo Sacdalan was apprehended on November 6, 1970 for violation of BP. Blg. 33, that Sacdalan admitted having diverted a portion of 9,000 liters of gasoline on one occasion and 2,000 liters out of 8,000 liters on another occasion and that the persons who supposedly received the diverted gasoline turned out to be fictitious. The statement of Sacdalan during the investigation in Camp Crame was attached to the appeal. Instead of remanding the case for the conduct of hearings or at least looking further into the factual situation, the respondent commission chose to merely copy verbatim the arbiter's findings of facts.

"The fact that the four drivers went against their employer who had no command or control over Petrophil when it would have been a simpler matter to show that they were free to haul Petrophil products and that Violago dismissed them for fancied or non-existent reasons shows that the evidence presented by the petitioner was not only adequate but also credible."

According to the Solicitor General and the Citizen's Legal Assistance Office, acting as private respondent's counsel, the fact that Mr. Apolinario was not given another assignment other than the trucks servicing San Miguel Corporation confirms the view that he was unlawfully dismissed by the petitioner. The records show that the private respondent did not raise this matter in the proceeding below. There is no showing that Marquez, Inc.

served other corporations or that Mr. Apolinario would have been welcome to carry cargoes of these corporations. The allegations in the complaint are clear to the effect that Mr. Apolinario was asking for reinstatement to his former position as driver of the cargo truck he used to drive prior to his alleged illegal dismissal. This fact is confirmed by the Order of the Deputy Minister reinstating him to his former position. Whether or not he should have been assigned to other routes was not touched upon in the order. This is a factual issue which should have been raised and threshed out in the proceedings below.

The records, however, show that the petitioner ceased operations on January 3, 1980. Mr. Apolinario, not having been dismissed by his employer is entitled to separation pay and other benefits which the other employees may have received as a result of the employer's cessation of business operations. This decision is without prejudice to any such benefits which shall be computed as of April 25, 1978 the date when Mr. Apolinario stopped working.

WHEREFORE, the Orders dated July 14, 1981 and January 11, 1983 of the Deputy Minister of Labor are hereby set aside and the Order dated January 26, 1978 of the Regional Director dismissing private respondents' complaint is reinstated. The dispositive portion of the January 26, 1978 order is hereby modified by directing the petitioner to grant separation pay to private respondent equivalent to one-half month pay for every year of service and other benefits which the other employees may have received as a result of petitioner's cessation of business operations, such benefits to be computed as of April 25, 1978 the date when private respondent stopped working. The temporary restraining order dated May 7, 1983 issued in connection with the instant petition is lifted. No costs.

**SO ORDERED.**

Melencio-Herrera, (Acting Chairman), Plana, Relova and De La Fuente, JJ., concur.

Teehankee, J., (Chairman), on leave.

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