

SEA-LAND SERVICE, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND JOSELITO REYES, RESPONDENTS.

G.R. No. 68212. May 24, 1985

Ponente: AQUINO, J.

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AQUINO, J.:

This case is about the dismissal of Joselito Reyes, a warehouse clerk, for alleged involvement in the pilferage of cargo. Reyes was employed by Sea-Land Service, Inc. on February 16, 1978. He was dismissed on September 2, 1982 for complicity in the theft of cargo.

The SS Mobile, a vessel of Sea-Land, discharged at Manila on July 10, 1981 cargoes among which were 510 cartons of White Flower patent medicine, a medicinal oil, consigned to D. Heng Trading of Cebu City. The container van brought the cargoes on July 11 to the Fairwinds Warehousing Corporation located at 23rd Street, Port Area, Manila where the cargoes destined for Manila were unloaded. The Cebu consignee of the medicinal oil did not receive 209 cartons. They were stolen while in the Fairwinds warehouse.

From the affidavits of Fernando Santos, a cargo checker of Sea-Land, it appears that when the container was opened at the Fairwinds warehouse early in the morning of Saturday, July 11, Reyes appeared thereat and invited Santos to partake of porridge in a stall at the Luneta Park.

On Sunday, July 12, Santos, Oscar Villanueva and one Abe conferred. They discussed the plan to steal the medicinal oil. Abe called up a certain Oben. Then, he informed Santos that a person named Oben would purchase the medicinal oil at one peso a bottle or for P152,000. Santos and Villanueva, together with Alfredo de la Cruz, repaired to the Fairwinds warehouse. They talked with Bautista, a security guard. They promised to pay him P40,000.

In the evening of July 12, the plan was implemented. At about midnight, Oben's cargo truck picked up the medicinal oil and brought it to Quezon City. At 11:30 Monday morning, July 13, Santos called up Reyes and apprised him that the theft had been accomplished. Santos and Reyes met at the Savory restaurant on T.M. Kalaw Street, Luneta at about 6:30 in the evening. Santos gave Reyes P30,000. Bautista was given P40,000.

Two days later, or on July 15, Santos, Villanueva, De la Cruz and Oben met Reyes at the Savory restaurant on Roxas Boulevard, Manila. Santos gave Reyes an additional P40,000. The balance of the proceeds of the pilferage was divided among Santos, Villanueva, De la Cruz and Oben.

Villanueva and De la Cruz in their affidavits confirmed that Santos gave P70,000 to Reyes.

During the execution of his affidavit, Santos identified Reyes in this manner:

"6 T — Sino ba naman diyan ang tinutukoy mong LITO REYES na binigyan mo ikamo ng pera? — S — Siya ho (matapos na lapitan at ituro si JOSELITO REYES y CAIMBON, 28 años, may asawa, Asst. Manager for Operations ng SEA-LAND SERVICE, INC. tubo sa Lipa City at nakatira sa No. 12 Banaag St., Pasig, Metro Manila na kausap ni Cpl. Jimenez sa kabilang lamesa)."

Oscar Villanueva and Alfredo de la Cruz identified Reyes as a stout person, more than 30 years old and wearing eyeglasses. De la Cruz pointed to Reyes during the execution of his sworn statement.

However, on September 28, 1981, Santos, Villanueva and De la Cruz repudiated their affidavits. They alleged that they were forced by the police to sign the same (Exh. U to U-2).

Sea-Land filed against Reyes in the Manila city fiscal's office a complaint for qualified theft. Fiscal Fernando P. Agdamag, the chief of the prosecution division, and Fiscal R. D. Conjares recommended the prosecution of Reyes for qualified theft. They found that the affidavits of Santos, Villanueva and De la Cruz were executed freely and voluntarily. The city fiscal approved the recommendation.

Reyes appealed to the Ministry of Justice which on April 16, 1984 reversed the city fiscal and recommended the dismissal of the complaint for qualified theft for insufficiency of evidence (pp. 11 and 127, Rollo).

Reyes filed on September 10, 1982 a complaint for illegal dismissal against Sea-Land. The Labor Arbiter in his decision dated January 23, 1984 found that Sea-Land's dismissal of Reyes was justified. As to Reyes' claim of underpayment of wages, it ordered Sea-Land to pay him 10% of his basic salary and cost of living allowance from July 1 to September 2, 1982.

The National Labor Relations Commission in its decision dated July 18, 1984 reversed the decision of the Labor Arbiter. It ordered Reyes' reinstatement with full backwages. It directed Sea-Land to pay the merit increase of Reyes.

Sea-Land contends in this certiorari petition (1) that conviction for qualified theft is not necessary to justify the dismissal of Reyes on the ground of breach of trust, (2) that there is in the record evidence to substantiate Reyes' participation in the pilferage and (3) that Reyes is not entitled to any merit increase.

We hold that the NLRC acted with grave abuse of discretion amounting to lack of jurisdiction in ordering the reinstatement of Reyes with full backwages and in directing that he is entitled to a merit increase.

A review of the record convinces an unbiased mind that Reyes was involved in the loss or theft of the medicinal oil. This fact need not be proven beyond reasonable doubt. It is sufficient that Sea-Land should have a basis for believing that Reyes "breached the trust and confidence reposed in him" by his employer within the meaning of section 283(c) of the Labor Code. As correctly stated by Sea-Land in its letter to Reyes, the company, "as a measure of self-protection was left with no recourse but to dismiss you" (Exh. A, NLRC Record).

The Labor Arbiter correctly relied on the rule that the conviction of an employee in a criminal case is not indispensable to warrant his dismissal by his employer and that the fact that a criminal complaint against the employee has been dropped by the city fiscal is not binding and conclusive upon a labor tribunal (*National Labor Union, Inc. vs. Standard Vacuum Oil Company*, 73 Phil. 279).

An employee's acquittal in a criminal case does not preclude a finding by a labor tribunal that he has been guilty of acts inimical to the employer's interest (*Nat. Organization of Laborers and Employees vs. Roldan*, 95 Phil. 727; *Gatmaitan vs. MRR Co.*, 128 Phil. 208; *Phil. Education Co., Inc. vs. Union of Phil. Education Employees and CIR*, 107 Phil. 1003; *Dole Philippines, Inc. vs. National Labor Relations Commission*, G. R. No. 55413, July 25, 1983, 123 SCRA 673; *Philippine Geothermal, Inc. vs. National Labor Relations*, G. R. No. 55249-50, October 19, 1982, 117 SCRA 692; *Philippine Long Distance Telephone Co. vs. NLRC*, G. R. No. 63191, April 30, 1984, 129 SCRA 163).

WHEREFORE, the decision of the National Labor Relations Commission is reversed and set aside. We affirm the decision of the Labor Arbiter. No costs.

SO ORDERED.

Makasiar, (Chairman), Abad Santos, Escolin, and Cuevas, JJ., concur.

Concepcion, Jr., J., did not take part.

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