

UNIVERSITY OF THE EAST, PETITIONER, VS. THE HON. NATIONAL LABOR RELATIONS COMMISSION, PELAGIO CARPIO AND RIZAL JOSE, RESPONDENTS.

G.R. No. 71065. November 22, 1985

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

A Certiorari proceeding to set aside the Decision of the Labor Arbiter ordering private respondent Rizal Jose's reinstatement despite proof of his serious misconduct, as well as the Resolution by the NLRC affirming said Decision.

The facts, which are admitted by private respondent Rizal Jose, who was a Dental Laboratory Helper of the Endodontics Department of petitioner University of the East prior to his dismissal, are as follows: In the afternoon of March 7, 1983, student Juliet Yu of petitioner's College of Dentistry lost her "foot control" at the Endodontics Department and asked private respondent about it. Private respondent denied any knowledge of its whereabouts. However, on March 9, 1983, private respondent sold to another Dentistry student, Lael Ignacio, a "foot control" for P300.00. Recognizing the foot control as the same one lost by Yu, Ignacio reported the matter to the Vice-Dean. When the Vice-Dean confronted private respondent, the latter admitted taking the foot control, "because he had problems and needed money".[1] The Vice-Dean elevated the matter to the Dean, who, in turn, required private respondent to explain in writing why he should not be dismissed for stealing. Private respondent did not submit the explanation but instead appeared before the Dean where he again admitted the theft but asked for a second chance.

However, considering the numerous cases of theft prevalent in petitioner's premises, the Dean recommended private respondent's dismissal to the administration. Private respondent was dismissed on March 16, 1983.

On July 26, 1983, private respondent filed a Complaint for Illegal Dismissal against petitioner before the Arbitration Branch of the National Labor Relations Commission, National Capital Region (Case No. NLRC/NCR 7-3381-83). Position papers were filed by the parties.

On May 7, 1984, respondent Labor Arbiter rendered a Decision the pertinent provisions of which read:

"xxx xxx xxx

"Clearly, complainant Rizal Jose committed serious misconduct in selling said foot control instead of looking for the owner or in the alternative depositing the same with the school administration. Evidently, there was intent to gain in him."

"Moreover, there is every reason for the respondent to lose trust and confidence in him. Instead of protecting the interest and property of the student as part of the institution, he was the one who betrayed them."

"The reasons given by the complainant concerning the motives of the school officials in dismissing him is of no consequence. His affidavit is uncorroborated, while the respondent's witnesses' assertions are firm,

convincing and undisputed."

"We therefore, find that the complainant is guilty as charged."

"However, considering the length of service as well as his willingness to make amends, We deem it reasonable and compassionate to reinstate complainant to his former or substantially equivalent position with the respondent without backwages, with the same rights and privileges appertaining to his former position. The period he was out of job is considered as suspension."

"IN VIEW THEREOF, judgment is hereby rendered ordering the respondent to reinstate complainant to his former or substantially equivalent position without backwages and without loss of seniority rights and privileges."

Petitioner appealed to respondent NLRC on the ground that the Labor Arbiter committed grave abuse of discretion in rendering a Decision contrary to the facts, the law and the evidence, and in disregard of petitioner's rights.

On June 5, 1985, respondent NLRC upheld the appealed Decision rationalizing thus:

"xxx xxx xxx

"Under the foregoing facts, there appears to be no doubt that complainant is guilty of misconduct but We take note however that the missing foot control was returned to the owner and no eventual pecuniary damage was suffered by any of the parties involved."

"xxx xxx xxx

"Complainant had been in the service of herein respondent for the last five (5) years, more or less. Except for the incident which gave rise to the present case, he had a clean record. To impose on him the industrial capital penalty of dismissal could bring untold difficulties not only to himself but to his family as well especially in these times of economic crisis that is gripping the country making further employment opportunities for one who has lost his job almost impossible to find. We therefore opt to affirm the decision appealed from but with a stern warning to herein complainant that the chance given him to improve his conduct could be the first and last."

"xxx xxx xxx

"WHEREFORE, x x x the appealed decision is hereby affirmed."

Commissioner Federico O. Borromeo dissented primarily on the ground that "to compel management to take complainant back to its fold is oppression."

The instant petition for certiorari seeks a reversal of the assailed Decision as being contrary to law and jurisprudence. The Court resolved to give due course as recommended even by the Solicitor General.

It cannot be denied that theft committed by an employee constitutes a valid reason for his dismissal by the employer. Thus, Article 283 of the Labor Code provides:

"Art. 283. Termination by employer — An employer may terminate an employment without a definite period for any of the following just causes:

"xxx xxx xxx

(b) serious misconduct x x x

"xxx xxx xxx

(d) fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative.

"xxx xxx xxx

(f) other causes analogous to the foregoing."

We agree with the Labor Arbiter and the NLRC that private respondent committed serious misconduct in stealing the "foot control", denying that he had done so, and subsequently selling the same. By doing so, he had breached the trust and confidence reposed in him by petitioner. The arguments to justify complainant's reinstatement that anyway no pecuniary damage was suffered by any of the parties as private respondent returned the money paid him, or that private respondent had expressed his willingness to make amends, would not mitigate his liability nor obliterate the loss of trust and confidence by petitioner in private respondent. Moreover, the records show that in December of 1980, private respondent was suspended for playing cards during office hours and for dereliction of duty and given a final warning "that in the event you commit the same act or similar offense in the future, as well as violate University Rules and Regulations, this Office will be constrained to terminate your services".[2]

In *Philippine Geothermal Inc. vs. NLRC*[3], we held that even an employee who has been exonerated from a criminal charge of theft x x x may still be dismissed from employment if the employer has ample reason to mistrust him. And in *SMC vs. NLRC*[4], it was held that reinstatement is not proper where termination of employment was due to breach of trust and confidence. On the contrary, reinstatement under the circumstances would be oppression. For "the law, in protecting the rights of the laborer, authorizes neither oppression nor self-destruction of the employer".[5]

ACCORDINGLY, the instant Petition is hereby granted, the assailed Decision of the Labor Arbiter and Resolution of the NLRC, dated May 7, 1984 and June 5, 1985 respectively, are hereby annulled and set aside, and petitioner's dismissal of private respondent on March 16, 1983 is hereby declared valid and binding. No costs.

SO ORDERED.

Teehankee, (Chairman), Plana, Gutierrez, Jr., De la Fuente, and Patajo, JJ., concur.

Relova, J., on official leave.

[1] Petition, p. 2.

[2] Annex "11", p. 34.

[3] 117 SCRA 692 [1982].

[4] 125 SCRA 805 [1983].

[5] *San Miguel Brewery vs. National Labor Union*, 97 Phil. 379 [1955]; *El Hogar Filipino Mutual Bldg. and Loan Association, et al., vs. Building Employees, INC., et al.*, 107 Phil. 473 [1960].

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