

COMMERCIAL MOTORS CORPORATION, PETITIONER, VS. COMMISSIONERS, SECOND DIVISION, NATIONAL LABOR RELATIONS COM-MISSION, AND PEDRO UMLAS, RESPONDENTS.

G.R. No. 74762, December 10, 1990

Ponente: NARVASA, J.

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NARVASA, J.:

This special civil action of certiorari treats of a decision of the National Labor Relations Commission dated April 7, 1986, declaring illegal the dismissal of Pedro Umlas from employment by the Commercial Motors Corporation (hereafter, simply CMC), and directing Umlas' reinstatement to his former position without loss of seniority rights and benefits with full back wages computed from the time of dismissal on November 16, 1983 until actually reinstated.

CMC is engaged in the sale, marketing and distribution of Mercedes Benz vehicles and spare parts, as well as in the servicing, repair and maintenance of said vehicles. It has branches in various parts of the country, including one in Davao.[1] Pedro Umlas had been working with CMC since May, 1973, first as Spare Parts Checker at the Manila Office; later, as Warehouse-in-Charge in the Davao Branch; and still later, Spare Parts Supervisor in the same Branch.[2]

Sometime in September, 1983, Umlas was required by his superiors to attend a seminar at the Manila Office, to be held from September 24, to October 3, 1983. Before leaving, and on instructions of Nestor Santos, the Manager of the Davao Branch, Umlas gave the keys of the warehouse to Rosalio Lacaba, the Spare Parts Counter Salesman.[3]

Apparently Branch Manager Nestor Santos learned afterwards of some irregularities in the Spare Parts Department. After preliminary verification, he asked Umlas to make an initial listing of missing parts, at the same time reporting the matter to the Head Office. Umlas failed to submit any list, so Santos called him and asked him directly about the reportedly missing spare parts. Thereafter, Santos instructed Umlas to make a report directly to the Manila Office, which the latter did, on October 22, 1983.[4]

On October 27, 1983, an audit team from the Manila Office arrived in Davao and proceeded to conduct an audit and physical inventory of spare parts in the Branch. Branch Manager Santos received information that Umlas not only refused to cooperate with the audit team, as instructed, but attempted to delay, disrupt and confuse the auditors.[5] Santos then issued an inter-office memorandum stating the following, among others:[6]

" * * * * .

Please be informed further that no local Davao spare parts personnel will participate in the audit. Davao personnel will, however, continue with the normal activities of selling, posting, recording, picking and etc. Davao personnel therefore should not interfere in any way with the audit team assignment/job unless properly requested."

The audit team discovered that spare parts were indeed missing or otherwise unaccounted for with a total value of P244,825.59. This finding was set out in an Affidavit of Loss executed on December 7, 1983 by Branch Manager Nestor Santos.[7]

An investigation on the same matter of missing spare parts was also conducted among the employees. One of them, Raul Morandante, the Service Counter Requisitionist of the Davao Branch, gave a sworn statement on November 3, 1983 setting out the following:[8]

- 1) on October 12, 1983, he saw Rosalio Lacaba, the Spare Parts Counter Salesman,[9] bring out a sealed carton (cardboard box) which he believed to contain a Mercedes Benz drive-shaft; Lacaba placed it in his jeep, parked inside the CMC compound;
- 2) to confirm his suspicion, Morandante made a check of spare parts in the warehouse the following day and then and there discovered that several spare parts were actually missing;
- 3) he reported this to his superior, who happened to be Pedro Umlas; the latter told him he would conduct his own investigation.

On November 8, 1983, five days later, Morandante executed a supplemental statement,[10] additionally declaring the following:

- 1) Umlas had told him not to inform Branch Manager Nestor Santos about the missing spare parts; and
- 2) on or about October 17, 1983, after Umlas had talked privately with Lacaba in the spare parts office, Umlas had instructed him (Morandante) to break the back door so as to give the impression that burglars had broken into the building and taken the missing spare parts, but Morandante had refused to do so.

On November 16, 1983, Umlas was served with a notice of preventive suspension and termination of his services, to take effect on December 16, 1983 on grounds of serious misconduct and dishonesty in the performance of duties, and fraud and wilful breach and/or loss of trust as Branch Spare Parts Supervisor. The notice reserved to management all actions for restitution and recovery of its losses.[11]

On December 14, 1983, CMC filed a criminal complaint with the Office of the Fiscal of Davao City charging Umlas, Lacaba, and a certain Rosalio Yap with qualified theft and violation of the Anti-Fencing Law (PD 1612). The preliminary investigation resulted in the dropping of all the charges against Umlas on the ground of insufficiency of evidence, on the one hand and the filing of corresponding indictments against Lacaba and Yap, on the other.[12] The dismissal of the accusations against Umlas was sustained after a reinvestigation undertaken at CMC's instance. A petition by CMC to have the resolutions of dismissal reviewed by the Ministry of Justice was rejected because filed out of time.[13]

On January 3, 1984, Umlas filed with the Regional Arbitration Branch at Davao City a complaint against CMC for illegal dismissal, illegal suspension, and for recovery of back wages and damages. After due proceedings, the Labor Arbiter found that he had been legally and properly dismissed from employment. The Arbiter thus dismissed Umlas' complaint but directed the payment to him of "his 13th month pay (P1,715.00) and service incentive leave pay (P522.80)" in the total amount of P2,237.80.[14]

On appeal seasonably taken by Umlas, however, the National Labor Relations Commission (Second Division) reversed the judgment of the Arbiter insofar as the latter had ruled Umlas' separation legal. The Commission's decision rendered on April 7, 1986 contained the following dispositive portion, to wit:

"WHEREFORE, in view of the foregoing, respondent is hereby ordered to immediately reinstate complainant to his former position without loss of seniority rights and benefits, with full backwages computed from the

time he was illegally terminated/suspended on November 16, 1983 until actually reinstated.

The claim for moral and exemplary damages ** (is) denied for want of proof and arguments.

Except as herein MODIFIED, the appealed Decision is affirmed in all other dispositions."

In the action at bar CMC would have this Court annul the NLRC decision of April 7, 1986, contending that the NLRC had gravely abused its discretion when it reversed the Labor Arbiter's judgment "merely because the criminal charges filed against ** (Umlas) were dropped by the Office of the City Fiscal." [15]

The contention is untenable. The Commission's reversal of the Arbiter's decision was not in truth grounded on the dismissal by the public prosecutor of the criminal charges proffered by CMC against Umlas. It was primarily premised on the failure of CMC to establish by adequate evidence its avowed ground for the termination of Umlas' services: loss of confidence. More specifically, like the City Fiscal of Davao, the Commission found the evidence given by Morandante, on which the Labor Arbiter appears to have relied quite heavily, to be unworthy of credit in the light of all the attendant circumstances.

Now, there is no gainsaying that loss of confidence is a recognized ground for the discharge of an employee from employment. But such a ground must be founded from facts established by substantial evidence. And the burden of establishing such facts as reasonably cause loss of confidence in an employee -- such facts as reasonably generate belief by the employer that the employee is connected with some misconduct and the nature of his participation therein is such as to render him unworthy of the trust and confidence demanded of his position -- is on the employer. [16] The fact that the employee has been absolved in a criminal prosecution involving said misconduct does not preclude the employer from attempting to prove the same before the labor arbiter or the latter from accepting that evidence as sufficient foundation for a finding of lawful termination of employment. Withal, the employer's evidence, although not required to be of such degree as is required in criminal cases, i.e., proof beyond reasonable doubt, must be substantial, must clearly and convincingly establish the facts upon which loss of confidence in the employee may fairly be made to rest. [17]

The NLRC analyzed the employer's proofs and came to the reasoned conclusion that they did not adequately demonstrate Umlas' connection with the loss of spare parts. The petitioner tries hard to convince the Court of the faultiness of the Commission's appreciation of the proofs. The question, however, is not whether the Commission erred in its assessment of the evidence, but whether that error, if error it be, was one that may be characterized as whimsical, capricious, or arbitrary. Whatever other things may be said about the Commission's disputed assessment of the evidence, it cannot be said to have been done whimsically, capriciously, or arbitrarily, a proposition that must necessarily cause dismissal of the action at bar, for failure of the petitioner to satisfactorily show any grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the respondent Commission, as required by Rule 65 of the Rules of Court on which said petitioner's plea for review is founded.

The record shows, moreover, that Umlas' separation from employment was effected without according him due process. He was not given notice of the charges against him and an opportunity to be heard thereon. The pronouncement by the NLRC of the illegality of Umlas's dismissal must thus be sustained.

It would seem, however, that the circumstances of this case render inappropriate Umlas' reinstatement to his former position, as an item of relief. A more equitable disposition is that which this Court has more than once made in other cases of the same nature: the award, in lieu of reinstatement, of separation pay at the rate of one month's salary for every year of service, "so that ** (the employee) can be spared the agony of having to work anew with ** (the employer) under an atmosphere of antipathy and antagonism, and the ** (latter) does not have to endure the continued service of ** (the former) in whom it has lost confidence." [18]

WHEREFORE, the Decision of the National Labor Relations Commission dated April 7, 1986 in NLRC Case No. 1356-LR-XI-84 is AFFIRMED as regards its basic findings and conclusions, but MODIFIED as to its dispositive part in that the requirement for the reinstatement of private respondent Pedro Umlas is DELETED, and petitioner Commercial Motors Corporation is hereby, ORDERED: (1) to give separation pay to said private respondent Pedro Umlas at the rate of one month's salary for every year of service; (2) to pay said Pedro Umlas back wages for three (3) years without qualification or deduction computed from the time of his illegal suspension and dismissal from employment; and (3) to pay Pedro Umlas the additional amount of P2,237.80, representing the aggregate of his 13th month pay in the sum of P1,715.00 and service incentive leave pay in the sum of P522.80, with interest thereon at the legal rate from the filing of the complaint. Costs against petitioner.

SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Rollo, p. 279

[2] Id., p. 242

[3] Id., pp. 242-243

[4] Id., p. 47

[5] Id., p. 10

[6] Id., p. 243

[7] Id., pp. 39-42

[8] Rollo, pp. 36-37

[9] To whom, it will be recalled, Umlas had delivered the keys to the warehouse prior to his departure to attend a seminar in the Manila Office from September 24 to October 3, 1983, *supra*

[10] Rollo, p. 38

[11] Id., pp. 11-12

[12] Id., pp. 145-150

[13] Id., p. 46

[14] Id., pp. 46A-52

[15] Id., p. 6

[16] SEE *Egyptair v. NLRC*, 148 SCRA 125

[17] SEE *Starlite Plastic Industrial Corporation v. NLRC*, 171 SCRA 315 (1989); *General Bank & Trust Co. v. C.A.*, 135 SCRA 569 (1985)

[18] *Citytrust Finance Corporation v. NLRC*, 157 SCRA 87 (1988), cited in *Quezon Electric Cooperative v. NLRC*, 172 SCRA 88, 97-98 (1989)

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