

JOSE P. DEL CASTILLO, JR., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, MARIWASA HONDA, INC., KAZUE ITO & ROGELIO P. ANTALAN, RESPONDENTS.

G.R. No. 75413. August 10, 1989

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

The petitioner was the Credit and Collection Manager of Mariwasa Honda, Inc. ("Mariwasa" for brevity) from August 16, 1973 up to April 1, 1981, when the company terminated his services for dishonesty, grave abuse of discretion, gross negligence, and violation of employment policies and procedures.

Among his duties as credit and collection manager was to file collection suits against defaulting dealers and customers. One such dealer was the Anchor Fishing and Trading Supply owned by Henry Samar of Legaspi City. A judgment by compromise was entered against Samar. Upon the debtor's failure to comply with the judgment, a writ of execution was issued by the court. In the implementation of the writ, a levy was made by the Deputy Sheriff of Legaspi City on twelve (12) parcels of land owned by Samar. However, the sale of the levied properties at public auction was aborted because, at the petitioner's behest, Samar signed on December 22, 1979, a Deed of Sale of ten (10), out of twelve (12), of his parcels of land in favor of Mariwasa, and another sale of the remaining two (2) parcels to the petitioner.

A report of this transaction reached the company through some unidentified informant. Having some premonition of impending trouble, petitioner wrote a letter to Emerson T. Coseteng, president of Mariwasa, offering to resign but with salary up to May, 1981, separation pay, and cash conversion of his vacation and sick leaves. He also applied for a 15-day vacation leave effective March 16, 1981. However, before he could take a vacation, the company's manager, Kazue Ito, advised him on March 13, 1981 that effective on that date he was being suspended indefinitely as credit and collection manager; that an investigation of his activities as head of the Credit and Collection Department was being conducted; and that he should effect a smooth turnover of his department to the officer-in-charge of the Special Task Force.

On March 16, 1981, Mariwasa sent telegrams and memos to its branches and dealers advising them that the petitioner was no longer connected with the company, that Cris Cifra had taken his place as credit and collection manager, and that any transactions with him after March 13, 1981 would not be honored by the company.

On March 17, 1981, petitioner addressed a letter to the Personnel Manager, Rogelio Antalan, reiterating his request to be allowed to resign with separation pay and with vacation leaves and sick leaves conversion.

Shortly thereafter, he learned about the company's memos to its branches and dealers disauthorizing him to do business with them. In a letter dated April 3, 1981 to the manager, he withdrew his offer to resign and his application for a 15-day leave. He assailed the order for his indefinite suspension and investigation and asked the company to recall it.

On April 8, 1981, the company advised him that his services were terminated effective April 1, 1981 for loss of trust and confidence. He, thereafter, filed a complaint for illegal dismissal in the NLRC.

After hearing the complaint, the Labor Arbiter found that "complainant has not been accorded his basic right to due process" (p. 31, Rollo) for he "was already dismissed from the service before any investigation was formally conducted by the said company" (p. 32, Rollo). Nevertheless, he held: "that respondent company had every reason to sever, as in fact, it did sever, its relationship with the complainant (Del Castillo)" for he prostituted his office "in order to gain material wealth at the expense of the company" (pp. 34-35, Rollo). The pertinent portion of the Labor Arbiter's decision is quoted below:

"Delving, however, into the cause/s that led the management to terminate the services of the complainant, it would appear that respondent company had every reason to sever, as in fact, it did sever, its relationship with the complainant herein. It has been clearly established that complainant wrote a letter to the Provincial Sheriff of Albay requesting that the Notice of Levy filed by Deputy Sheriff Ernesto Ramirez on January 26, 1979 be cancelled and/or withdrawn on the ground that judgment debtor, Henry C. Samar, has already executed in favor of the respondent company a Deed of Sale covering only ten (10) parcels of land, which were part of the twelve (12) originally levied in January 1979; that the two (2) parcels were obtained by the complainant for himself on December 19, 1979 from the spouses Aida B. Samar and Henry Samar three (3) days before the ten (10) parcels of land were conveyed to the respondent company; that had there been a public auction of the twelve (12) parcels of land levied by the Sheriff, the company would have acquired all the twelve (12) parcels of land instead of only ten (10) parcels; and, that complainant's action has prejudiced the interest of the respondent company as in this case.

"Assuming that the value of the ten (10) parcels of land was more than enough to cover the judgment debt, the fact that complainant as Collection and Credit Manager acquired the two (2) parcels of land which were also included in the levied properties undeniably exposes himself to the charge of prostituting his office in order to gain material wealth at the expense of the company. By giving him said position, respondent company has reposed in him trust and confidence which, unfortunately, he betrayed by committing acts inimical to the interest of the company. It is within management's prerogative to seek his dismissal for loss of trust and confidence. It is a well-settled rule in this jurisdiction that an employer cannot be compelled to retain under his employ an employee whose continued employment is inimical to his interest. The law in protecting the interest of the laborer does not authorize the oppression or destruction of the employer." (Underscoring supplied; pp. 34-35, Rollo.)

The Labor Arbiter dismissed the complaint and ordered the respondent to pay the complainant separation pay equivalent to 5 and 1/2 months salary. However, as his dismissal was for a valid and justifiable cause, his claim for damages was dismissed for lack of merit (p. 37, Rollo). Upon appeal by Del Castillo, the appealed decision was affirmed by the NLRC. He now seeks a review of that decision by this Court.

After a careful consideration of the petition and Mariwasa's comment thereon, We hold that the NLRC and the Labor Arbiter correctly found that petitioner was lawfully dismissed for a just cause - dishonesty. However, they erred in awarding to him separation pay equivalent to 5-1/2 months' salary. An employee who is found guilty of dishonesty deserves no such reward. As We held in a similar case:

"The Court feels that distinctions are in order. We note that heretofore the separation pay, when it was considered warranted, was required regardless of the nature or degree of the ground proved, be it mere inefficiency or something graver like immorality or dishonesty. The benediction of compassion was made to cover a multitude of sins, as it were, and to justify the helping hand to the validly dismissed employee whatever the reason for his dismissal. This policy should be re-examined. It is time we rationalized the exception, to make it fair to both labor and management, especially to labor.

"There should be no question that where it comes to such valid but not iniquitous causes as failure to comply with work standards, the grant of separation pay to the dismissed employee may be both just and compassionate, particularly if he has worked for some time with the company. For example, a subordinate who has irreconcilable policy or personal differences with his employer may be validly dismissed for demonstrated loss of confidence, which is an allowable ground. A working mother who has to be frequently absent because she has also to take care of her child may also be removed because of her poor attendance, this being another authorized ground. It is not the employee's fault if he does not have the necessary aptitude for his work but on the other hand the company cannot be required to maintain him just the same at the expense of the efficiency of its operations. He too may be validly replaced. Under these and similar circumstances, however, the award to the employee of separation pay would be sustainable under the social justice policy even if the separation is for cause.

"But where the cause of the separation is more serious than mere inefficiency, the generosity of the law must be more discerning. There is no doubt it is compassionate to give separation pay to a salesman if he is dismissed for his inability to fill his quota but surely he does not deserve such generosity if his offense is misappropriation of the receipts of his sales. This is no longer mere incompetence but clear dishonesty. A security guard found sleeping on the job is doubtless subject to dismissal but may be allowed separation pay since his conduct, while inept, is not depraved. But if he was in fact not really sleeping but sleeping with a prostitute during his tour of duty and in the company premises, the situation is changed completely. This is not only inefficiency but immorality and the grant of separation pay would be entirely unjustified.

"We hold that henceforth separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice." (PLDT vs. NLRC, et al., G.R. No. 80609, August 23, 1988.)

WHEREFORE, the petition is dismissed. The decision of the NLRC is affirmed except the award of separation pay to the employee, Jose P. Del Castillo, Jr., which is hereby set aside. In lieu thereof and in accordance with our ruling in *Wenphil Corp. vs. NLRC*, G.R. No. 80587, February 8, 1989, the employer is ordered to pay the sum of P1,000 to the petitioner as damages for the employer's failure to observe due process in terminating the petitioner's services. Costs against petitioner.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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