

ATLAS CONSOLIDATED MINING & DEVELOPMENT CORPORATION, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND JAIME BASANEZ, RESPONDENTS.

G.R. No. 75755. November 24, 1988

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari seeking to set aside the resolution dated June 26, 1986, of the National Labor Relations Commission (First Division) in Case No. RAB-VII-009982, entitled "Jaime Basanez vs. Atlas Consolidated Mining & Development Corporation and/or Emilio Borja, Division Manager", which modified the Labor Arbiter's decision dated July 16, 1982 ordering respondent (petitioner) to pay complainant in lieu of reinstatement, his separation pay and one year backwages.

Complainant Jaime Basanez (now private respondent) was employed by petitioner Atlas Consolidated Mining Development Corporation as helper mechanic, heavy pay loader operator, clerk-typist, expediter, and finally supervisor of the Coal Conversion Project, at Sangi Beach, Toledo City, from October 3, 1966 to January 25, 1982, with a monthly salary of P1,720.00 when he was dismissed from the service.

The dismissal of private respondent stemmed from a verified complaint filed by three rank-and-file employees namely: Cresenciano Ysatam, Bonifacio T. Alqueza and Nazario M. Carballo alleging that they were threatened by Basanez with termination of their employment unless they give him P100.00 each. Further, they claimed that to get employed with petitioner's company, they gave one chicken each to Basanez thru his step-mother who was the barangay captain of their barrio. For fear of termination of their services, the three complainants reported the matter to their union.

A special investigation board was formed to investigate Basanez for: (1) Serious misconduct; (2) willful breach of the trust and confidence reposed in him by his employer; (3) committing acts of dishonesty and breach of trust; (4) receiving money or gifts from applicants or other personal favors by virtue of his position or influence in the company. The Board found him guilty as charged and he was dismissed by the petitioner on January 25, 1982.

The dispositive portion of the Special Investigating Board's report reads:

"WHEREFORE, premises considered, this Board finds respondent's contesting the charges against him not justified and finds him to have violated paragraph IB-4, IC-2, IC-3 and IC-8 of the Uniform Code of Conduct and by virtue thereof, Management loses trust and confidence in him as a managerial employee of the Company." (Annex A, P. 23, Rollo)

Basanez filed a complaint dated January 29, 1982 with the Regional Arbitration Branch of the National Labor Relations Commission in Cebu City for Illegal Dismissal against petitioner and the Labor Arbiter, on July 16, 1982 rendered a decision in favor of private respondent (Annex "A", Rollo pp. 14-34), the dispositive portion of which reads:

“IN VIEW OF THE FOREGOING CONSIDERATION, respondent is hereby orderered to reinstate immediately complainant, JAIME BASANEZ, to his former position under the same terms and conditions without backwages.” (Annex “A”, pp. 20-21, Petition)

Petitioner filed a Motion for Reconsideration/Appeal on August 9, 1982 of the decision of the Labor Arbiter dated July 16, 1982, with the National Labor Relations Commission.

On June 28, 1984, respondent National Labor Relations Commission rendered a decision (Annex "B", Rollo, pp. 35-40) which set aside the Labor Arbiter's decision and dismissed private respondents' complaint for lack of merit. The dispositive portion reads as follows:

'WHEREFORE, the decision appealed from is hereby SET ASIDE and a new one entered DISMISSING the complaint for lack of merit.

SO ORDERED.”

(p. 6, Annex "B" Petition)

On June 26, 1986, public respondent NLRC acting on private respondent's motion for reconsideration pro-mulgated its decision setting aside its previous decision dated June 28, 1984 and a new judgment was rendered ordering petitioner to pay private respondent, "in lieu of reinstatement, his separation pay, equivalent to one month pay for every year of service, fraction of six months or more shall be considered as one whole year, and, in addition, his backwages equivalent to one year without qualification and deductions.” (Rollo, p. 86)

Hence this petition.

In a resolution of the Second Division of this Court dated September 17, 1986, the Court resolved to give due course to the petition and required respondent to file answer (Rollo, p. 49), which was filed on December 8, 1986 (Rollo, p. 81), while petitioner filed a reply to the answer of the Solicitor General on March 25, 1986 (Rollo, p. 97) in compliance with the resolution of February 16, 1987 (Rollo, p. 96). The Solicitor General filed its motion on June 2, 1987 praying that its answer be considered as its memorandum (Rollo, p. 106), while private respondent and petitioner filed their memoranda on July 6, 1987 (Rollo, p. 111) and July 20, 1987 (Rollo, p. 120), respectively.

The grounds invoked by petitioner in its petition, are the following:

“A.

RESPONDENT COMMISSION ERRED IN HOLDING THAT THE EVIDENCE ON RECORD FAILS TO SHOW SUFFICIENTLY THAT THE GIVING BY THE THREE WITNESSES OF CHICKEN TO THE PRIVATE RESPONDENT'S STEP-MOTHER WAS WITH HIS KNOWLEDGE OR WAS THE MAIN CONSIDERA-TION FOR THE EMPLOYMENT OF THE WITNESSES.

“B.

RESPONDENT COMMISSION ERRED IN HOLDING THAT THE EVIDENCE IS NOT SUFFICIENT TO SHOW THAT PRIVATE RESPONDENT DEMANDED P100.00 FROM EACH OF THE THREE WITNESSES AS A CONDITION FOR THEIR CONTINUED EMPLOYMENT WITH PETITIONER.

“C.

RESPONDENT COMMISSION ERRED IN OVERLOOKING THE CLAIM OF PETITIONER THAT PRIVATE RESPONDENT WAS CAUGHT REFUELLING HIS CAR AT A GAS STATION OF PETITIONER EVEN THOUGH HE HAD NO GAS ALLOCATION TO BE TAKEN FROM THE GAS STATION, WHICH CLAIM WAS NOT REFUTED BY PRIVATE RESPONDENT AND WOULD BE SUFFICIENT BASIS FOR PRIVATE RESPONDENT'S DISMISSAL ON THE BASIS OF LOSS OF CONFIDENCE." (Rollo, p. 7)

In addition, petitioner claimed that public respondent NLRC "has decided a question of substance not in accordance with law and applicable decisions of the Honorable Supreme Court and with grave abuse of discretion amounting to lack of jurisdiction pursuant to Rule 45 of the Rules of Court." (Petition, p. 1).

The pivotal question in this case is the scope of the "loss of confidence" clause which would justify the dismissal of a supervisory employee.

It is noteworthy that both the Labor Arbiter and the National Labor Relations Commission found that the guilt of private respondent Jaime Basanez has not been proven by strong and convincing evidence (Rollo, pp. 33; 43). In fact, the Solicitor General maintained the view that there is not even a substantial, let alone direct or positive proof to sustain the charges against private respondent (Rollo, pp. 88-89). More than that, it is unrefuted that Basanez has an unblemished record for the whole sixteen (16) years of service he rendered for the petitioner.

Specifically, the records fail to show that the giving of the chicken to respondent's mother-in-law was with the knowledge of respondent, much less the main consideration of the employment of the three complaining witnesses. On the contrary, Basanez has stressed that said witnesses were already employed when they gave the chicken to his mother-in-law who was their Barangay Chairman; so that the giving was more of a token of gratitude (Rollo, pp. 42-43). Similarly, respondent's alleged demand for P100.00 from each of the witnesses was not sufficiently established, as nobody had heard or seen what actually transpired except the complaining witnesses themselves.

Verily, there is no question that the findings of fact of the National Labor Relations Commission are entitled to great respect (*Haverton Shipping Ltd. v. NLRC*, 135 SCRA 685 /1985/; *Manila Hotel Corp. v. NLRC*, 141 SCRA 169 /1986/), and that the findings of administrative agencies which have acquired expertise because their jurisdiction is confined to specific matters are generally accorded not only respect but even finality (*Genconsu Free Workers Union v. Inciong*, 91 SCRA 311 /1979/).

By and large, this Court has continually recognized the right of the employer to dismiss an employee on the ground of loss of confidence or breach of trust (*San Miguel Corporation v. NLRC*, 128 SCRA 188 /1984/; *Nevans v. CIR*, 22 SCRA 1321 /1968/; *Central Textiles Mills, Inc. v. NLRC*, 90 SCRA 9 /1979/; *Villadolid v. Inciong*, 121 SCRA 205 /1983/, *Dole Philippines v. NLRC*, 123 SCRA /1983/; *Tabacalera Insurance Co. v. NLRC*, 152 SCRA 667 /1987/) cited in *Vincent Riker v. Ople and Mayon Imperial Hotel*, G.R. No. 50492, Oct. 27, 1987). In fact, the mere existence of a basis for believing that the employee has breached the trust and confidence reposed in him by his employer is sufficient ground for dismissal (*Land Service v. NLRC*, 136 SCRA 544 /1985/).

More so, in the case of supervisor or other personnel occupying positions of responsibility, the loss of the trust and confidence of their employer may justify their termination (*Associated Citizens Bank v. Ople*, 103 SCRA 130 /1981/; *New Frontier Mines, Inc. v. NLRC et al.*, 129 SCRA 502 /1984/; *Reynolds Philippines v. Eslava*, 137 SCRA 259 /1985/; *Lasam Trading, Inc. v. Hon. Vicente Leogardo, Jr., et al.*, 144 SCRA 571 /1986/).

But this Court has also stressed that the right of the employer must not be exercised arbitrarily and without just cause; otherwise, the constitutional guarantee of security of tenure of the workers would be rendered nugatory. While it is true that to dismiss or lay off an employee is a management's prerogative, it must nevertheless be

done without abuse of discretion, for what is at stake is not only the worker's position but also his means of livelihood (*Kapisanan ng Manggagawa sa Camara Shoes v. Camara Shoes*, 111 SCRA 477 /1984/).

This Court has further emphasized that:

"xxx Such a vague, all-encompassing pretext as loss of confidence, if given the seal of approval by this Court, could easily be utilized to reduce to a barren form of words the constitutional guarantee of security of tenure. Precisely, the employee is afforded that protection so that his means of livelihood is not placed at the mercy of management. He is just as much a participant in the industrial process. He is entitled to be considered as such. Constitutional provisions protecting labor are in line with the predominant thinking all over the world safeguarding human dignity. It would then be to ignore not only a mandate of the fundamental law but also a counsel of wisdom and fair play to impart to the concept of loss of confidence such a latitudinarian scope. What matters the investigation undergone by private respondent resulting in the affirmation of his innocence, if thereafter management would just rely on an alleged loss of confidence? xxx". (*Central Textile Mills, Inc. v. NLRC*, 90 SCRA 9 /1979/).

In reiteration of the above ruling, it has likewise been held that where the charges against the petitioner were found to be unsubstantiated, there is no other alternative but to hold that the so-called "loss of confidence" is without basis and may not be successfully invoked as ground for dismissal which requires some basis therefor, such ground never having been intended to afford an occasion for abuse by the employer of its prerogative, as it can easily be subject to abuse because of its subjective nature, to dismiss employees in contravention of the "protection of labor" clause of the Constitution (*Acda v. Minister of Labor*, 119 SCRA 314 /1982/).

In the case at bar, there appears to be no argument that the charges against private respondent are unsubstantiated and that he therefore, deserves reinstatement.

As ruled by this Court where there was no valid termination, private respondent is entitled under Article 280 of the Labor Code to reinstatement without loss of seniority rights and with backwages from the time his compensation was withheld up to the time of his reinstatement. However, this Court in the interest of justice and expediency, has adopted the policy of granting backwages for a maximum of three (3) years without qualification and deduction (*Manila Hotel v. NLRC*, 141 SCRA 178 /1986/).

In the case at bar, the NLRC, as aforesaid, ordered the payment of separation pay to private respondent in "lieu of reinstatement" with backwages equivalent to one year without qualification and deductions.

It appearing that this case has been pending since January 29, 1982 when private respondent filed a complaint for illegal dismissal, it is evident that an award of three (3) years' backpay without qualification and deduction as laid down by the Supreme Court in a number of cases (*Manila Hotel Corp. v. NLRC*, supra; *Talisay Employees and Laborers' Ass. (TELA) v. CIR*, 143 SCRA 225 /1986/; *Mercury Drug Co., Inc. v. Court of Industrial Relations*, 56 SCRA 694; *People's Bank & Trust Co. v. PBTC Employees Union*, 69 SCRA 10; *Insular Life Insurance Co., Ltd., Employees Assn, NATU v. Insular Life Assurance Co., Ltd.*, 76 SCRA 50; *Monteverde v. Court of Industrial Relations*, 79 SCRA 259; *Davao Development Corp. v. National Labor Relations Commission*, 81 SCRA 489; *L.R. Aguinaldo, Inc. v. Court of Industrial Relations*, 82 SCRA 309; *Liberty Cotton Mills Workers Union v. Liberty Cotton Mills, Inc.*, 90 SCRA 391; *Litex Employees Assn. v. Court of Industrial Relations*, 116 SCRA 459; *Associated Anglo-American Tobacco Corp. v. Lazaro*, 125 SCRA 463; *PAL, Inc. v. NLRC*, 126 SCRA 223; *Union of Supervisors (RB) NATU v. Secretary of Labor*, 128 SCRA 442, *Lepanto Consolidated Mining Company v. Encarnacion*, 136 SCRA 256; *Panay Railways, Incorporated v. National Labor Relations Commission*, 137 SCRA 480), is just and reasonable. But because private respondent has not filed a petition to correct the judgment, the judgment cannot be modified.

WHEREFORE, the instant petition is DISMISSED.

SO ORDERED.

Melencio-Herrera, (Chairperson), Padilla, Sarmiento, and Regalado, JJ., concur.

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