

VIRGILIO RAPOSON, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, FIRST DIVISION, EXCELLENCE MARKETING AND NIXON SIOCO, RESPONDENTS.

G.R. No. 76936. August 17, 1989

Ponente: PADILLA, J.

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PADILLA, J.:

The present petition for certiorari seeks to annul the resolutions of the National Labor Relations Commission, First Division*, dated 27 December 1985, 20 May 1986 and 14 November 1986, setting aside its earlier resolution dated 15 July 1985 which affirmed the ruling of the Labor Arbiter that petitioner had been illegally dismissed from his employment.

The records of the case show that petitioner had been in the employ of private respondents from July 1972 to August 1982; that his last position was that of Sales Manager with a gross salary, including allowance, in the amount of P1,800.00 a month; that on 31 August 1982, private respondent Nixon Sioco, President and General Manager of respondent company, informed petitioner that the company was incurring heavy losses and so, it was closing down its business; and that, in consideration of petitioner's years of service, he was given the sum of P1,000.00 and, from then on, considered to have been separated from the company.[1]

Subsequently, petitioner filed a complaint for illegal dismissal against private respondents, docketed as Case No. 6-2720-83. After the parties had submitted their respective position papers, the Labor Arbiter, on 12 December 1984, rendered a decision ruling that the complainant (herein petitioner) was illegally dismissed, thus -

"WHEREFORE, the respondents are hereby declared liable and are ordered to reinstate complainant to his former or equivalent position without loss of seniority rights and to pay his back wage computed from the date he was illegally dismissed up to his actual reinstatement."[2]

On appeal by the private respondents, the NLRC affirmed the appealed decision in a resolution dated 15 July 1985, holding thus -

"WHEREFORE, premises considered, the appealed Decision is as it is hereby AFFIRMED en toto. Consequently, respondents-appellants are directed to show proof of immediate compliance to (sic) the mandate of the affirmed Decision after ten (10) days from receipt of this Resolution."[3]

Private respondents then filed a motion for reconsideration of the said resolution. Acting on the motion, the respondent Commission reversed its resolution dated 15 July 1985, in a resolution dated 27 December 1985, holding this time that there was no illegal dismissal, thus -

WHEREFORE, premises considered the resolution promulgated by this Commission on 15 July 1985, is hereby set aside and a new one is hereby entered dismissing the above, entitled case for lack of merit. Respondents-appellants, however, are ordered to pay complainant-appellee his separation pay, equivalent to 1/2 month pay for every year of service."[4] (emphasis supplied).

Two (2) separate motions for reconsideration filed by the petitioner were denied by the respondent Commission in resolutions, dated 20 May 1986 and 14 November 1986.[5] Hence, this recourse.

In his instant petition, petitioner mainly contends that respondent company committed grave abuse of discretion in terminating his services, hence, his dismissal was illegal.

In its questioned resolution dated 27 December 1985, which was affirmed in its subsequent resolutions dated 20 May 1986 and 14 November 1986, the NLRC ruled that the petitioner's dismissal was made in good faith, and is, therefore, not illegal. It held that the closing or cessation of business operations due to serious business reverses is a justified ground for the dismissal of an employee, and that the fact that the respondent-employer has not really closed down its business and has in fact continued operations are immaterial, in the absence of a showing that at the time of employee's dismissal from employment, respondent-employer was in bad faith, or that employee's termination from employment was due to some ulterior motives.[6]

In contrast, the Labor Arbiter earlier held that petitioner's dismissal from employment was not based on a just cause and thus illegal, inasmuch as no evidence whatsoever was submitted by the respondent employer to support its allegation that, at the time of petitioner's dismissal from employment, the company was suffering from business reverses and that it had ceased operations; that, on the contrary, the evidence showed that respondent company was still in operation.[7]

On the matter of termination of employment, then Article 284 (now Article 283) of the Labor Code provided:

"ART. 284. Closure of establishment and reduction of personnel. - The employer may also terminate the employment of any employee due to x x x the closing or cessation of operation of the establishment or undertaking unless the closing is for the purposes of circumventing the provisions of this title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. x x x." (emphasis supplied)

In this connection, the respondent NLRC noted that, considering that the petitioner was the sales manager of the respondent company, he was presumed to know the real financial condition of the company and that the burden of proof was on the petitioner to show that the respondent company was not telling the truth in alleging that it was suffering from business reverses. Further, the NLRC stated that the acceptance by the petitioner from the company of P1,000.00 signified consent on his part to the termination of his employment as well as his acknowledgment of the poor financial business condition of the company.

We hold for the petitioner.

As the Labor Arbiter had observed, the respondent employer failed to present evidence that the company was suffering from business losses at the time of the questioned termination. The said officer also noted that the company did not even give notice of dismissal to the petitioner.

In the light of the aforecited findings of the Labor Arbiter, it cannot be said that the dismissal of petitioner from employment was based on the ground of closure or cessation of the employer's business operations nor can it be said that termination was based on any other ground recognized by law for termination of employment. While it is true that management has the sole prerogative to dismiss or layoff an employee, the exercise of such right must be made without grave abuse of discretion.[8] In other words, it must be founded on a valid and just cause supported by reasonably substantial evidence, as distinguished from mere whim or caprice.

As to petitioner's acceptance of the P1,000.00 from the private respondents, we hold that this does not estop petitioner from questioning the legality of his termination from employment as it is a settled rule that the receipt of separation pay is not a bar to contesting the legality of dismissal from employment.[9]

Finally, the Court notes as significant that, in the instant case, the Solicitor General, who generally represents and defends the NLRC, does not agree with the NLRC's assailed ruling, and recommends the setting aside of the questioned resolutions.[10] It is even more significant to note that the chief legal officer of respondent NLRC does not interpose any objection to the grant of the present petition, and in fact proposes the reinstatement of the NLRC resolution dated 15 July 1985 which affirmed the decision of the Labor Arbiter.[11]

WHEREFORE, the NLRC resolutions dated 27 December 1985, 20 May 1986 and 14 November 1986 are SET ASIDE. Its resolution dated 15 July 1985 affirming the Labor Arbiter's decision, dated 12 December 1984, is hereby REINSTATED, with the modification that back salaries shall be limited to three (3) years, in line with prevailing jurisprudence.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Sarmiento, and Regalado, JJ., concur.

* Geronimo Q. Quadra: Cleto T. Villatuya; and Presiding Commissioner Diego P. Atienza, the latter, dissenting in this case.

[1] Rollo, pp. 55-56

[2] Id., p. 34

[3] Id., p. 47-48

[4] Id., p. 59

[5] Id., 74-78, 86, and 119

[6] Id., pp. 57-58

[7] Id., p. 33

[8] Remerco v. MOLE, G.R. No. 56176-77, February 28, 1985, 135 SCRA 167

[9] De Leon v. NLRC, G.R. No. 52056, October 30, 1980, 100 SCRA 691

[10] Rollo, p. 101

[11] Id., pp. 118-121

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