

PNOC-ENERGY DEVELOPMENT CORPORATION, PETITIONER, VS. NATIONAL LABOR RELATIONS COM-MISSION (THIRD DIVISION) AND DANILO MERCADO, RESPONDENTS.

G.R. No. 79182. September 11, 1991

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for certiorari to set aside the Resolution[*] dated July 3, 1987 of respondent National Labor Relations Commission (NLRC for brevity) which affirmed the decision dated April 30, 1986 of Labor Arbiter Vito J. Minoria of the NLRC, Regional Arbitration Branch No. VII at Cebu City in Case No. RAB-VII-0556-85 entitled "Danilo Mercado, Complainant, vs. Philippine National Oil Company-Energy Development Corporation, Respondent", ordering the reinstatement of complainant Danilo Mercado and the award of various monetary claims.

The factual background of this case is as follows:

Private respondent Danilo Mercado was first employed by herein petitioner Philippine National Oil Company-Energy Development Corporation (PNOC-EDC for brevity) on August 13, 1979. He held various positions ranging from clerk, general clerk to shipping clerk during his employment at its Cebu office until his transfer to its establishment at Palimpinon, Dumaguete, Oriental Negros on September 5, 1984. On June 30, 1985, private respondent Mercado was dismissed. His last salary was P1,585.00 a month basic pay plus P800.00 living allowance (Labor Arbiter's Decision, Annex "E" of Petition, Rollo, p. 52).

The grounds for the dismissal of Mercado are allegedly serious acts of dishonesty committed as follows:

"1. On April 12, 1985, Danilo Mercado was ordered to purchase 1,400 pieces of nipa shingles from Mrs. Leonardo Nodado of Banilad, Dumaguete City, for the total purchase price of P1,680.00. Against company policy, regulations and specific orders, Danilo Mercado withdrew the nipa shingles from the supplier but paid the amount of P1,000.00 only. Danilo Mercado appropriated the balance of P680.00 for his personal use;

"2. In the same transaction stated above, the supplier agreed to give the company a discount of P70.00 which Danilo Mercado did not report to the company;

"3. On March 28, 1985, Danilo Mercado was instructed to contract the services of Fred R. Melon of Dumaguete City, for the fabrication of rubber stamps, for the total amount of P28.66. Danilo Mercado paid the amount of P20.00 to Fred R. Melon and appropriated for his personal use the balance of P8.66.

"In addition, private respondent, Danilo Mercado violated company rules and regulations in the following instances:

"1. On June 5, 1985, Danilo Mercado was absent from work without leave, without proper turn-over of his work, causing disruption and delay of company work activities;

“2. On June 15, 1985, Danilo Mercado went on vacation leave without prior leave, against company policy, rules and regulations.” (Petitioner’s Memorandum, Rollo, p. 195).

On September 23, 1985, private respondent Mercado filed a complaint for illegal dismissal, retirement benefits, separation pay, unpaid wages, etc. against petitioner PNOC-EDC before the NLRC Regional Arbitration Branch No. VII docketed as Case No. RAB--VII-0556-85.

After private respondent Mercado filed his position paper on December 16, 1985 (Annex "B" of the Petition, Rollo, pp. 28-40), petitioner PNOC-EDC filed its Position Paper/Motion to Dismiss on January 15, 1986, praying for the dismissal of the case on the ground that the Labor Arbiter and/or the NLRC had no jurisdiction over the case (Annex "C" of the Petition, Rollo, pp. 41-45), which was assailed by private respondent Mercado in his Opposition to the Position Paper/Motion to Dismiss dated March 12, 1986 (Annex "D" of the Petition, Rollo, pp. 46-50).

The Labor Arbiter ruled in favor of private respondent Mercado. The dispositive portion of said decision reads as follows:

“WHEREFORE, in view of the foregoing, respondents are hereby ordered:

“1)

To reinstate complainant to his former position with full back wages from the date of his dismissal up to the time of his actual reinstatement without loss of seniority rights and other privileges;

“2)

To pay complainant the amount of P10,000.00 representing his personal share of his savings account with the respondents;

“3)

To pay complainant the amount of P30,000.00 moral damages; P20,000.00 exemplary damages and P5,000.00 attorney’s fees;

“4)

To pay complainant the amount of P792.50 as his proportionate 13th month pay for 1985.

"Respondents are hereby further ordered to deposit the aforementioned amounts with this Office within ten days from receipt of a copy of this decision for further disposition.

"SO ORDERED."

(Labor Arbiter's Decision, Rollo, p. 56)

The appeal to the NLRC was dismissed for lack of merit on July 3, 1987 and the assailed decision was affirmed.

Hence, this petition.

The issues raised by petitioner in this instant petition are:

- Whether or not matters of employment affecting the PNOC-EDC, a government owned and controlled

corporation, are within the jurisdiction of the Labor Arbiter and the NLRC.

- Assuming the affirmative, whether or not the Labor Arbiter and the NLRC are justified in ordering the reinstatement of private respondent, payment of his savings, and proportionate 13th month pay and payment of damages as well as attorney's fee.

Petitioner PNOC-EDC alleges that it is a corporation wholly owned and controlled by the government; that the Energy Development Corporation is a subsidiary of the Philippine National Oil Company which is a government entity created under Presidential Decree No. 334, as amended; that being a government-owned and controlled corporation, it is governed by the Civil Service Law as provided for in Section 1, Article XII-B of the 1973 Constitution, Section 56 of Presidential Decree No. 807 (Civil Service Decree) and Article 277 of Presidential Decree No. 442, as amended (Labor Code).

The 1973 Constitution provides:

"The Civil Service embraces every branch, agency, subdivision and instrumentality of the government including government-owned or controlled corporations."

Petitioner PNOC-EDC argued that since Labor Arbiter Minoria rendered the decision at the time when the 1973 Constitution was in force, said decision is null and void because under the 1973 Constitution, government-owned and controlled corporations were governed by the Civil Service Law. Even assuming that PNOC-EDC has no original or special charter and Section 2(i), Article IX-B of the 1987 Constitution provides that:

"The Civil Service embraces all branches, subdivision, instrumentalities and agencies of the Government, including government-owned or controlled corporations with original charters."

such circumstances cannot give validity to the decision of the Labor Arbiter (*Ibid.*, pp. 192-193).

This issue has already been laid to rest in the case of *PNOC-EDC vs. Leogardo*, 175 SCRA 26 (July 5, 1989), involving the same petitioner and the same issue, where this Court ruled that the doctrine that employees of government-owned and/or controlled corporations, whether created by special law or formed as subsidiaries under the General Corporation law are governed by the Civil Service Law and not by the Labor Code, has been supplanted by the present Constitution. "Thus, under the present state of the law, the test in determining whether a government-owned or controlled corporation is subject to the Civil Service Law is the manner of its creation, such that government corporations created by special charter are subject to its provisions while those incorporated under the General Corporation Law are not within its coverage."

Specifically, the PNOC-EDC having been incorporated under the General Corporation Law was held to be a government-owned or controlled corporation whose employees are subject to the provisions of the Labor Code (*Ibid.*).

The fact that the case arose at the time when the 1973 Constitution was still in effect, does not deprive the NLRC of jurisdiction on the premise that it is the 1987 Constitution that governs because it is the Constitution in place at the time of the decision (*NASECO v. NLRC*, G.R. No. 69870, 168 SCRA 122 [1988]).

In the case at bar, the decision of the NLRC was promulgated on July 3, 1987. Accordingly, this case falls squarely under the rulings of the aforementioned cases.

As regards the second issue, the record shows that PNOC-EDC's accusations of dishonesty and violations of company rules are not supported by evidence. Nonetheless, while acknowledging the rule that administrative bodies are not governed by the strict rules of evidence, petitioner PNOC-EDC alleges that the labor arbiter's propensity to decide the case through the position papers submitted by the parties is violative of due process

thereby rendering the decision null and void (*Ibid.*, p. 196).

On the other hand, private respondent contends that as can be seen from petitioner's Motion for Reconsideration and/or Appeal dated July 28, 1986 (Annex "F" of the Petition, Rollo, pp. 57-64), the latter never questioned the findings of facts of the Labor Arbiter but simply limited its objection to the lack of legal basis in view of its stand that the NLRC had no jurisdiction over the case (Private Respondent's Memorandum, Rollo, p. 104).

Petitioner PNOC-EDC filed its Position Paper/Motion to Dismiss dated January 15, 1986 (Annex "C" of the Petition, Rollo, pp. 41-45) before the Regional Arbitration Branch No. VII of Cebu City and its Motion for Reconsideration and/or Appeal dated July 28, 1986 (Annex "F" of the Petition, Rollo, pp. 57-64) before the NLRC of Cebu City. Indisputably, the requirements of due process are satisfied when the parties are given an opportunity to submit position papers. What the fundamental law abhors is not the absence of previous notice but rather the absolute lack of opportunity to ventilate a party's side. There is no denial of due process where the party submitted its position paper and filed its motion for reconsideration (*Odin Security Agency vs. De la Serna*, 182 SCRA 472 [February 21, 1990]). Petitioner's subsequent Motion for Reconsideration and/or Appeal has the effect of curing whatever irregularity might have been committed in the proceedings below (*T.H. Valderama and Sons, Inc. vs. Drilon*, 181 SCRA 308 [January 22, 1990]).

Furthermore, it has been consistently held that findings of administrative agencies which have acquired expertise because their jurisdiction is confined to specific matters are accorded not only respect but even finality (*Asian Construction and Development Corporation vs. NLRC*, 187 SCRA 784 [July 27, 1990]; *Lopez Sugar Corporation vs. Federation of Free Workers*, 189 SCRA 179 [August 30, 1990]). Judicial review by this Court does not go so far as to evaluate the sufficiency of the evidence but is limited to issues of jurisdiction or grave abuse of discretion (*Filipinas Manufacturers Bank vs. NLRC*, 182 SCRA 848 [February 28, 1990]). A careful study of the records shows no substantive reason to depart from these established principles.

While it is true that loss of trust or breach of confidence is a valid ground for dismissing an employee, such loss or breach of trust must have some basis (*Gubac v. NLRC*, 187 SCRA 412 [July 13, 1990]). As found by the Labor Arbiter, the accusations of petitioner PNOC-EDC against private respondent Mercado have no basis. Mrs. Leonardo Nodado, from whom the nipa shingles were purchased, sufficiently explained in her affidavit (Rollo, p. 36) that the total purchase price of P1,680.00 was paid by respondent Mercado as agreed upon. The alleged discount given by Mrs. Nodado is not supported by evidence as well as the alleged appropriation of P8.66 from the cost of fabrication of rubber stamps. The Labor Arbiter, likewise, found no evidence to support the alleged violation of company rules. On the contrary, he found respondent Mercado's explanation in his affidavit (Rollo, pp. 38-40) as to the alleged violations to be satisfactory. Moreover, these findings were never contradicted by petitioner PNOC-EDC.

PREMISES CONSIDERED, the petition is DENIED and the resolution of respondent NLRC dated July 3, 1987 is AFFIRMED with the modification that the moral damages are reduced to Ten Thousand (P10,000.00) Pesos, and the exemplary damages reduced to Five Thousand (P5,000.00) Pesos.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, and Regalado, JJ., concur.
Sarmiento, J., on leave.

[*] Penned by Commissioner Mirasol Viniega-Corleto.

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