

MARINA PORT SERVICES, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, LABOR ARBITER CRESENCIO R. INIEGO, JOSE M. CARPIO, VIRGILIO CERVANTES, RONALDO M. REYES, BIENVEN...

G.R. No. 80962. January 28, 1991

Ponente: CRUZ, J.

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CRUZ, J.:

On July 19, 1986, the Philippine Ports Authority canceled its arrastre management contract with Metro Port Services, Inc. and directly assumed the cargo handling operations in the South Harbor of Manila.

Two days later, it awarded a permit to Marina Port Services to undertake arrastre services in the same port, subject inter alia to the following stipulation embodied in Paragraph 7 of the terms and conditions of the said permit:

Labor and personnel of previous operator, except those positions of trust and confidence, shall be absorbed by grantee. Labor or employees benefits provided for under existing CBA shall likewise be honored.

Marina retained the bulk of the 2,700-man personnel of Metro but refused to continue the employment of 65 of the 123 persons constituting the security force. The guards excluded were served with notices of separation effective on various dates during the period from July 19 to August 24, 1986. Their reaction was to file a complaint for illegal dismissal and damages with the Department of Labor and Employment on August 5, 1986.

After submission of position papers by the parties, Labor Arbiter Crescencio R. Iniego held in favor of the complainants. In a decision dated December 22, 1986, he ordered their reinstatement without loss of seniority rights and payment of back salaries, moral and exemplary damages and attorney's fees.[1]

On October 30, 1987, his decision was affirmed by the respondent National Labor Relations Commission except for the award of moral and exemplary damages, which was deleted.[2] The motion for reconsideration was denied on November 23, 1987.[3]

The petitioner then came to this Court alleging grave abuse of discretion on the part of the public respondent. We issued a temporary restraining order on January 6, 1988,[4] and required comments from the respondents, to which a reply was submitted, followed by a rejoinder and then a sur-rejoinder. On October 10, 1988, we gave due course to the petition and called for the submission of simultaneous memoranda, which were both filed on February 13, 1989.

The petitioner contends specifically that: a) it had no pre-existing employer-employee relationship with the private respondents; b) Paragraph 7 of the terms and conditions of the permit should be interpreted by a court of law and not the NLRC; and c) Marina was not obligated to re-hire the private respondents because it had no license to maintain a security agency.

On the first issue, the petitioner contends that Metro and Marina are entirely different entities; hence, the latter is not bound by the contracts entered into by the former. The private respondents were employed by Metro, not Marina. Marina did not even succeed Metro in the arrastre operations because it derived its permit directly from the Philippine Ports Authority after that office took over the said operations from Metro. Consequently, the private respondents had no valid claim for reinstatement against Marina.

The Court agrees that as a mere successor of Metro in the arrastre operations in the South Harbor, Marina did not become responsible for the employment commitments of the latter. The rule on this matter is well-settled.[5] Nevertheless, we should not disregard Paragraph 7, under which Marina expressly agreed to absorb the employees of Metro as a condition of the permit granted by the PPA. In fact, conformably to that stipulation, Marina did absorb the majority of Metro's personnel, including some of its security force. This circumstance modifies the general rule as far as this case is concerned and renders pointless all debate on whether or not Metro's employees automatically became Marina's employees. They did not, of course, following the general rule; but they became so by virtue of Paragraph 7 of the terms and conditions of the permit.

Did the absorbed employees include the private respondents?

The petitioner maintains that they had no right to be re-hired because they were occupying positions of trust and confidence as members of the security force and so came under the exception in Paragraph 7. In support of this view, it cites the following excerpt from the decision in *San Miguel Corporation v. NLRC*: [6]

In *Lepanto Consolidated Mining Co. v. Court of Appeals* (1 SCRA 1251), we held that where an employee occupies a position of trust and confidence, as where he is entrusted with confidential or delicate matters, or where the custody, handling, or care and protection of the employer's property, acts tending to show untrustworthiness may constitute a just cause for dismissal, or of loss of employer's confidence.

The above statement was mere obiter and not even necessary for the determination of that case; and neither was it intended as a categorical interpretation of the phrase "trust and confidence." The reference to *Lepanto* was for purposes of illustration only as that decision also did not carry its own definition of the phrase in question. The Court is therefore not limited by those cases in its examination of when a position may be considered one of trust and confidence, for the purpose at least of determining the correct meaning of Paragraph 7.

As we see it, a strictly literal interpretation of the phrase was not intended in Paragraph 7. On the contrary, we feel that the reference intended was not to any employee entrusted with the custody of company property but to a higher category of employees not belonging to the rank-and-file but holding managerial positions. As the Solicitor General suggests:

The interpretation of the term trust and confidence should be restricted to managerial employees. Those who are vested with powers or prerogatives to lay down management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees, or to effectively recommend such managerial actions (Article 212(k), Labor Code of the Philippines). The positions held by private respondents (that of security services) which are by and large limited to securing the employer's property as well as its clients' property could hardly be considered as one of trust and confidence under paragraph 7 of the Additional Terms and Conditions of the Management Contract.[7]

To be sure, every employee must enjoy some degree of trust and confidence from the employer as that is one reason why he was employed in the first place. One certainly does not employ a person he distrusts. Indeed, even the lowly janitor must enjoy that trust and confidence in some measure if only because he is the one who opens the office in the morning and closes it at night and in this sense is entrusted with the care or protection of the employer's property. The keys he holds are the symbol of that trust and confidence.

By the same token, the security guard must also be considered as enjoying the trust and confidence of his employer, whose property he is safeguarding. Like the janitor, he has access to this property. He, too, is charged with its care and protection.

Notably, however, and like the janitor again, he is entrusted only with the physical task of protecting that property. The employer's trust and confidence in him is limited to that ministerial function. He is not entrusted, in the Labor Arbiter's words, "with the duties of safekeeping and safeguarding company policies, management instructions, and company secrets such as operation devices." He is not privy to these confidential matters, which are shared only in the higher echelons of management. It is the persons on such levels who, because they discharge these sensitive duties, may be considered holding positions of trust and confidence. The security guard does not belong in such category.

It follows that the Labor Arbiter did not err in interpreting Paragraph 7 and assuming jurisdiction over what is clearly a labor dispute involving employer-employee relations.

Turning now to the alleged illegal dismissal of the private respondents, we affirm first of all that loss of confidence is a valid ground for dismissal under our labor laws. However, that ground, like any other ground, must first be established in proper proceedings before an employee can be lawfully dismissed. The following provisions in the Omnibus Rules Implementing the Labor Code,[8] which are here re-stated as a reminder to all employers, prescribe the procedure to be observed in any action of management against the employee:

Section 1. Security of tenure and due process. - No worker shall be dismissed except for a just or authorized cause provided by law and after due process.

2. Notice of dismissal. - Any employer who seeks to dismiss a worker shall furnish him a written notice stating the particular acts or omission constituting the grounds for his dismissal. In cases of abandonment of work, the notice shall be served at the worker's last known address.

x x x

5. Answer and hearing. - The worker may answer the allegations stated against him in the notice of dismissal within a reasonable period from receipt of such notice. The employer shall afford the worker ample opportunity to be heard and to defend himself with the assistance of his representative, if he so desires.

6. Decision to dismiss. - The employer shall immediately notify a worker in writing of a decision to dismiss him stating clearly the reasons therefor.

The record shows that the above procedure was not followed by the petitioner when it dismissed the private respondents. There was no hearing conducted as required by the rules, only an alleged background investigation that supposedly linked them to pilferages in the pier. No charges were formally preferred against the private respondents nor were they given a chance to defend themselves. They were simply and arbitrarily separated and served notices of termination in disregard of their rights to due process and security of tenure.

The following pronouncements from this Court are appropriate:

Loss of confidence constitutes a just cause for terminating an employer-employee relationship. But for dismissal for loss of confidence to be warranted, there should naturally be some basis for it. Unsupported by sufficient proof, loss of confidence is without basis and may not be successfully invoked as a ground for dismissal. Loss of confidence as a ground for dismissal has never 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.

The burden of proof rests upon the employer that the dismissal is for cause, and the failure of the employer to do so would mean that the dismissal is not justified.[9]

x x x

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? x x x" (Central Textile Mills, Inc, v. NLRC, 90 SCRA 9; see also *Acda v. Minister of Labor*, 119 SCRA 306)[10]

The argument that the petitioner could not re-hire the private respondents because it had no license to operate a security agency must fall against the admitted fact that it retained 56 of the security guards and later re-hired two others even without the said license. The solution, at any rate, was to secure the license if it was really necessary, not to dismiss some of the security guards while retaining the others.

It remains to say that if the petitioner distrusts the private respondents, it may still seek to establish its lack of confidence and trust in them by proving that ground for their dismissal at an investigation conducted in accordance with the prescribed procedure. But before it can do so, it must first reinstate all of them as among the personnel of the previous operator to be absorbed by the grantee of the permit, conformably to its commitment in the aforesaid Paragraph 7.

WHEREFORE, the appealed decision dated October 30, 1987, is **AFFIRMED** with the modification that the payment of back salaries shall be limited to only three years. The temporary restraining order dated January 6, 1986, is **LIFTED**. The petition is **DENIED**, with costs against the petitioner.

SO ORDERED.

Narvasa, (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Rollo, p. 58.

[2] *Ibid.*, p. 68.

[3] *Id.*, p. 72.

[4] *Id.*, p. 74.

[5] *Filipinas Port Services, Inc. Damasticor vs. NLRC*, 177 SCRA 203.

[6] 128 SCRA 180.

[7] Rollo, p. 132.

[8] Book V, Rule XIV, Termination of Employment.

[9] *Hernandez vs. NLRC*, 176 SCRA 269.

[10] *San Miguel Corporation vs. NLRC*, *supra*.

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