

ROCHE (PHILIPPINES), JERRY LOSBANES, GONZALO GALANG AND HENRICUS H.J.A. DORTSMAN, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, LABOR ARBITER VITO J. MINORIA AND REYNALD...

G.R. No. 83335. October 05, 1989

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

Once again, this Court is tasked with determining the legality of the termination of an employee in the present petition for certiorari. Petitioners seek the reversal of the Decision[1] of the National Labor Relations Commission wherein the termination of the private respondent was declared illegal.

The antecedent facts of the case are as follows:

Private respondent Reynaldo J. Villareal was employed by petitioner company as a medical representative for the Dumaguete/Bohol area. As such, his duty was to conduct sales calls on physicians within his territory and providing the latter with drug samples on dates specified by the company so as to create a promotional impact for the products of Roche. Inasmuch as the nature of the work of medical representatives like Villareal requires that they go out in the field for most of the day, the company is unable to monitor their work hours through the bundy clock system. Thus, the company devised a method whereby the day to day activities of these employees could nevertheless be checked. They were required to fill out daily call reports indicating the names of physicians visited for a particular day and the drug samples issued to the latter. Each doctor was also to sign an acknowledgement of receipt of the drug samples indicating the date of each visit.

On September 20, 1982, petitioner Jerry Losbanes supervisor of Roche (Phil.) for the East-West Visayas area, wrote the private respondent informing the latter of a report filed by Johnny de la Cruz, its marketing manager for Bulk Vitamins. Mr. de la Cruz had allegedly seen Villareal in Cebu City on September 9, 1982 when the latter was supposed to have been in Dumaguete City as stated in his assigned itinerary and as declared by him in his Daily Call Report for that particular day. Accusing Villareal of "kiting" as the aforesaid practice is called, petitioner Losbanes directed the former to explain in writing why he should not be recommended for dismissal. Realizing the gravity of such accusation, Villareal immediately complied with the said directive by submitting his answer on September 23. In the said answer, he emphatically denied the charges hurled at him and added that in all his fourteen years of service to the company, not once had he indulged in the abhorred practice of "kiting." He then invited the company to conduct an investigation of the matter and even submitted a certification from 26 physicians covered by him on the 9th and 10th of September 1982, to prove that he was in Negros Oriental performing his duties and not in Cebu City as claimed by Mr. de la Cruz. Pending investigation of his case, Villareal was suspended by the company for an indefinite period.

Without conducting any hearing whatsoever, Villareal was notified in writing of his dismissal from the service on September 24, 1982 by petitioners Galang and Dortsman for allegedly falsifying his Daily Call Report for

September 9, 1982. His dismissal was to take effect on the 27th of the same month.

Hoping to present his side and in an attempt to change the verdict reached by the petitioners, Villareal sought out the latter on September 28, 1982 at the Montebello Hotel in Cebu City where they were having a meeting. However, his pleas fell on deaf ears inasmuch as the petitioners refused to speak with him and curtly advised him that his dismissal was a closed matter as far as the company was concerned. Instead, he was asked to turn over all company assets in his possession. He complied with the instructions.

Shortly thereafter, the company required him to sign a letter-quitclaim as a condition for the issuance of a certificate of employment. This request was followed by several checks issued in the name of Villareal which purport to show that the company had already settled its obligation with him. A letter accompanying the said checks stated that "while accepting the above payments, you confirm that you have no claims whatsoever, to presents against Roche (Phils.), Inc. in relation to your activity with this Company or otherwise." [2] However, private respondent rejected the same.

Realizing that there was no other way for him to clear his name, Villareal was prompted to seek redress by filing a complaint with the National Labor Relation Commission. [3] Included in his complaint for illegal dismissal was his claim for 50% of the savings obtained by the company from the cost-savings plan which he had devised for the latter in response to an inter-office memorandums dated December 22, 1977, encouraging all employees of Roche to come up with cost-savings proposal. The said memorandums guaranteed an incentive of 50% share in any amount saved during the first 12 months of the implementation of the approved proposal. Private respondent claims that the petitioner company adopted his proposals but the promised 50% share was never given to him despite repeated demands.

After due consideration of the evidence brought before him, the labor arbiter held [4] that the company was guilty of illegal dismissal. It was ordered to pay the complainant unpaid salaries, backwages, 13th month pay along with other benefits and allowances. In the event that Villareal opted to retire, the company was ordered to pay him his retirement benefits. Damages amounting to P155,000.00 were also awarded.

Petitioners interposed an appeal with the respondent National Labor Relations Commission. It proved to be futile since the appeal was dismissed for lack of merit. The decision appealed from was affirmed, albeit with certain modifications, the dispositive portions of which reads, thus:

"The respondents are hereby ordered:

To reinstate complainant to his former position without loss of seniority rights and to pay him, jointly and severally, his full back wages and benefits from the time compensation was withheld from him covering second half of September 1982 up to the date of his actual reinstatement including all benefits like the 13th month pay and other benefits and/or allowances;

To pay complainant, jointly and severally, should he opt to retire, retirement benefits at the rate of a month's basic salary for every year of service covering the period from September 1968 to September 1983 when he would have been eligible for retirement, thence 1 1/2 month's salary for every year thereafter until his suppose reinstatement had he not opted to retire.

Respondents are likewise ordered to pay complainant, jointly and severally, 50% of the total amount saved by the respondent corporation covering a period of 12 months from the adoption and implementation of the cost-saving proposal of complainants provided should there be no more existing records available as basis for computation the amount is hereby fixed at FIVE HUNDRED THOUSAND PESOS (P500,000.00); Respondents are further ordered to pay complainant, jointly and severally the sum of P100,000.00 as Moral Damages; P50,000.00 as Exemplary Damages and 10% of the total monetary awards as attorneys' fees.

SO ORDERED,"[5] (Emphasis supplied.)

A motion for reconsideration of the above-quoted Decision was denied in a minute resolution[6] of the respondent Commission.

Hence, the instant petition for certiorari where the petitioners set forth the following questions for judicial determinations:

"A. Whether or not the NLRC and the Arbiter acted without or in excess of jurisdiction and/or committed grave abuse of discretion amounting to lack of jurisdiction in:

1. Finding the company guilty of illegally dismissing Villareal for "kiting" committed through falsifications of his daily call reports.
2. Finding the company guilty of denying Villareal the due process of law, by dismissing him without any formal investigation;
3. Finding Villareal entitled to the cost-saving bonus;
4. Finding Villareal entitled to retirement benefits; and
5. Finding the Company in bad faith in dismissing Villareal, thus entitling the latter to damages;

B. Whether or not the NLRC acted without or in excess of jurisdiction and/or committed grave abuse of discretion amounting to lack of jurisdiction in granting Villareal additional reliefs, even if the latter did not appeal from the decisions of the Arbiter."[7]

This Court finds the petition bereft of merit.

Petitioners insist that they have gathered sufficient evidence to dismiss Villareal for "kiting" through falsifications of his Daily Call Report. To bolster this allegation they presented the testimony of Johnny de la Cruz who had allegedly seen Villareal in Cebu City at around 4:30 p.m. of September 9, 1982. He averred that Villareal greeted him with the following statement: "Sir, I'm coming in from Dumaguete City. I am not supposed to be officially in yet. Sir, don't tell them that you saw me."[8] Suspecting that something was irregular, de la Cruz allegedly checked the Daily Call Report filed by Villareal for the said date and discovered that the latter reported that he was in Dumaguete at that time. These circumstances, according to petitioners, clearly justify the termination of Villareal from employment because of "kiting."

This Court finds the above-mentioned testimony doubtful.

First, it is unlikely that Villareal, upon seeing an executive of the company, would go out of his way to confess his misdeed especially to one he hardly knows, having met the latter only once. This kind of behavior runs contrary to ordinary experience. If it was true that Villareal was in Cebu City on that day, it would have been more natural for him to take all precautions to avoid being seen by anyone from the company. Or if he was actually seen he would have kept mum about his infraction of the rules.

Secondly, it cannot be denied that Roche (Phil.) is a big organization. It employs a great number of medical representatives to promote its products. Thus, it appears improbable that De la Cruz would have been able to identify Villareal when the latter was not even under his direct supervision. He met him only once and casually.

Lastly, assuming Villareal was seen in Cebu City at the time and he informed de la Cruz that he just arrived from Dumaguete, if so then he was not "kiting." His violation, if at all, is that he returned too soon.

In denying that they have deprived the right of Villareal to due process, the petitioners pointed out that he was

informed of the charges against him and he was given the opportunity to explain his side. Citing *Associated Citizen's Banks vs Ople*[9], the petitioners attempted to substantiate their arguments by mentioning that this Court had previously done away with the holding of a hearing in order to comply with the constitutional requirement of due process.

However, the circumstances obtaining in the above-cited case bears no resemblance to the case at bar. The former contemplate a situation where the employee admits his guilt and all his admissions are corroborated by documentary evidence. Such is not the case in the present controversy where Villareal never admitted the commission of the offense he has being charged of. The records do not indubitably show that Villareal was actually in Cebu City on that day. A hearing was, therefore, necessary to thresh out all doubts as to the conflicting allegation of De la Cruz and Villareal. The failure of petitioner to give private respondent the benefit of a hearing and an investigation before his termination constitutes an infringement of his constitutional right to due process of law.[10]

Petitioners next assail the legality of the order of reinstatement made by the respondent commission by citing *San Miguel Corporation vs. NLRC*[11] where this Court found that reinstatement was improper whenever the termination of an employee was due to breach of trust and confidence. Quoting certain passages from the decision of this Court in the subsequent case of *Wenphil Corporation vs. NLRC and Millarre*,[12] petitioners tried to buttress this line of reasoning by stating that the termination of an employee was proper since "it would be highly prejudicial to the interests of the employer to impose on him the services of an employee who has been shown to be guilty of the charges that warranted his dismissal from employment." [13]

Again, an examination of the facts in the above cited cases shows that these two cases bear no resemblance to the case at bar. In *Wenphil*, the employee was dismissed for his insubordination since he had flagrantly violated company policy by engaging in a brawl with another employee within the company premises. Likewise, in *San Miguel Corporation*, the employee was dismissed for having misappropriated company funds. The said funds were disbursed by the company to be used in posting bail for the said employee when the latter was criminally charged with damage to property through reckless imprudence. Upon the dismissal of the case, the employee deposited the cash bond in his account instead of returning the said amount to the company. No reasonable explanation was given by him when confronted by his superiors. Considering the gravity of the offenses, taken together with the evidence presented against the said employees, this Court found their dismissal to be proper.

But such is not the case with Villareal wherein the very credibility of the only witness against him is put in issue. Furthermore, Villareal had served the company for fourteen years with nary a complaint from his superiors such that an offense like "kiting" would not have merited such a drastic punishment as dismissal; that is, if he were really guilty of the said offense. Hence, the failure of the petitioner to prove such fact "necessarily means that the dismissals is not justified, and, therefore, the employee is entitled to be reinstated in accordance with the mandate of Article 280 of the New Labor Code." [14] Subsequent pronouncements of this Court reiterate this doctrine. For instance, in *Dabuet vs. Roches Pharmaceuticals*, [15] this Court held that reinstatement must follow as a matter of right whenever the management has been found guilty of illegal dismissal.

Having established the impropriety of the dismissal of Villareal, thus requiring his consequent reinstatement, the question as to his entitlement to retirement benefits arises.

The collective bargaining agreement entered into between the management and the union provides for an optional retirement program for employees who have been with the company for fifteens (15) consecutive years. The company undertook to pay the basic pay for one month multiplied by the number of years the employee has served the company for the first 15 years and a month and a half's basic salary for every year for the subsequent

years.

The provisions of the collective bargaining agreement must be respected since its terms and conditions "constitute the law between the parties." Those who are entitled to its benefits can invoke its provisions. In the event that an obligations therein imposed is not fulfilled, the aggrieved party has the right to go to court for redress.[16]

The next issue is whether or not Villareal is entitled to be paid the cost saving bonus of 50% of the amount saved by the company for the year that his proposal was implemented. This time the Court resolves the issue in the negative.

Petitioners allege that the inter-office memorandum upon which Villareal bases his claim was not in effect when the latter submitted his proposal. Petitioners also ask why Villareal tarried for such a long time before filing the said claim if he honestly believed that he was entitled to the same. Petitioners further aver that even if Villareal was legally entitled to the said bonus, prescription has set in under Article 291 of the Labor Code. The aforementioned article provides that "all money claims arising from employer-employee relations accruing during the effectivity of this Code shall be filed within three (3) years from the time the cause of action accrued, otherwise, they shall be forever barred."

This Court cannot allow Villareal to recover said claim at this late time. He should have filed his claims against Roche the moment his cause of action accrued instead of waiting for five years before doing so. He had, therefore, slept on his rights and should not be rewarded for his own negligence. On this aspect, the Court must hold for the petitioners.

Petitioners then suggest that the respondent Commission abused its discretion in awarding reliefs in excess of those stated in the decision of the labor arbiter despite the absence of an appeal by Villareal. To stress this point, they cited Section 5(c) of the Rules of Procedure of the National Labor Relations Commission which provides that the Commission shall, in cases of perfected appeals, limit itself to reviewing those issues which were raised on appeal. Consequently, those which were not raised on appeal shall be final and executory.

There is no merit in this contention. The records show that the petitioners elevated the issues regarding the correctness of the award of damages, reinstatement with backpay, retirement benefits and the cost-saving bonus to the respondent Commission in their appeal. This opened the said issues for review and any action taken thereon by the Commission was well within the parameters of its jurisdiction.

With regard to the propriety of the award of moral damages, this Court, in a long line of cases, has consistently granted the lowly workingman the right to recover damages for unjust dismissals tainted with bad faith. In the instant petition, the motive of the company in dismissing Villareal was far from noble as borne by the circumstances surrounding such dismissal.

Petitioners must have known that Villareal, who had been their employee for fourteen (14) years, had only one year to serve before he could avail of the benefits of the optional retirement plan stipulated in the collective bargaining agreement. Consequently, the latter would be receiving a considerable sum of money from the company and the only way they could avoid this obligation was to find a reason, no matter how flimsy, to terminate the employment of Villareal. Conveniently, indeed, petitioners discovered that Villareal was "kiting" and outrightly dismissed him on the basis of the unsubstantiated allegations of one person. Their bad faith was made more apparent by their refusal to conduct a formal investigation to give Villareal an opportunity to traverse the charges against him. The judgment of the respondent Commission regarding the award of damages plus ten percent (10%) of the entire monetary award must, therefore, be sustained.

Lastly, the backwages awarded to Villareal should not exceed three (3) years.

WHEREFORE, with the modification eliminating the award for cost saving bonus and that the backwages should not exceed three (3) years, the decision of the respondent NLRC is affirmed in all other respects, with costs against petitioners.

SO ORDERED.

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

[1] Penned by Commissioner Oscar Abella and concurred in by Commissioners Zapanta and Lucas, Jr.

[2] Page 182, Rollo.

[3] The case was assigned to Labor Arbiter Vito J. Minoria.

[4] Page 7, Labor Arbiter Decision; Page 33, Rollo.

[5] Page 98, Rollo.

[6] Dated March 14, 1988.

[7] Pages 139-140, Rollo.

[8] Page 182, Rollo.

[9] 103 SCRA 130 (1981).

[10] BLTB Bus Co. vs. Court of Appeals, 71 SCRA 470 (1976); see also Batas Pambansa Blg. 130.

[11] 125 SCRA 805 (1983).

[12] G.R. No. 80587, February 8, 1989.

[13] Ibid. Emphasis supplied.

[14] Polymedic General Hospital vs. NLRC, 134 SCRA 420, 424 (1985), Emphasis supplied.

[15] 149 SCRA 386 (1987).

[16] Mactan Workers Union vs. Aboitiz, 45 SCRA 577, 581 (1972), citing Shell Oil Workers Union vs. Shell Company of the Philippines, 39 SCRA 276 (1971).

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