

CONRADO TIU AND/OR CONTI PAWNSHOP, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND CARMEN L. ANCHETA, RESPONDENTS.

G.R. No. 83433, November 12, 1992

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

This is a special civil action for certiorari seeking the reversal of the 28 January 1988 decision of public respondent National Labor Relations Commission (NLRC), in NLRC Case No. RAB III-5-2673-86, which ordered the petitioners to pay the private respondent backwages for a period of two (2) years and separation pay equivalent to one (1) month pay for every year of service, a fraction of at least six (6) months to be considered one (1) year.

Briefly, the following are the antecedent facts:

Private respondent Carmen L. Ancheta was the petitioners' employee from April 1970 until 25 February 1986 when she was dismissed on the alleged ground of loss of trust and confidence. She started as an appraiser in the CONTI PAWNSHOP and ended up as a pawnshop supervisor by the time she was dismissed.

As an appraiser, she had the following duties: (1) to accept jewelry and other articles offered as pledge; (2) to test and appraise such jewelry and articles for genuineness; and (3) to weigh and appraise the articles and assess the amounts for which they could be pledged. As pawnshop supervisor, she not only performed the functions of an appraiser, but supervised the business and personnel of the petitioners as well. The supervisor aspect of the job entailed the training of personnel on how to appraise pieces of jewelry.

Sometime in December of 1985, petitioners, received an anonymous letter informing them that the private respondent was involved in certain anomalies in the pawnshop. This letter specifically cited the private respondent's false claim that certain pawnshop equipment issued to her were lost; the letter alleged that the latter's version is a mere fabrication, as she was using such equipments in her personal business dealings which involved the buying and selling of jewelry.

By virtue thereof, petitioners conducted an investigation and came out with the finding that while the private respondent was not guilty of the wrong alleged in the letter, she violated certain company policies. These discovered infractions pertain to the policy of allowing employees to purchase jewelry at a discounted rate or agent's price provided the same is for the personal use of the employee himself or his immediate family. Petitioners established this policy to give their employees the opportunity to buy jewelry for themselves at the lowest price possible.

In their letter of 10 January 1986 to the private respondent, petitioners required the latter to explain why she should not be dismissed for violating the said company policy in the face of a well-founded belief that the jewelry she bought at a discounted price was being sold by her to parties other than the members of her immediate family.

She was given until the end of the same day to give her explanation.

Within this short span of time private respondent submitted a handwritten answer wherein she admitted that some of her relatives who are not members of her immediate family bought jewelry from the said pawnshop at the agent's price. However, this was done with the approval of the petitioners' salesgirls who thought that there was nothing wrong with selling the same at a discounted rate to relatives of their co-employee. Private respondent emphasized that it was her relatives who personally went to the pawnshop to buy for themselves and that there was nothing clandestine about it.

Finding the explanation unsatisfactory, the petitioners, on 25 January 1986, issued an inter-office memorandum[1] to the private respondent informing her that pending the result of an overall evaluation of the charge against her, she is to be placed under suspension from 27 January 1986 until 25 February 1986 or for a total of thirty (30) days.

Subsequently, on 27 January 1986, barely two (2) days after the issuance of the aforesaid memorandum, and on the day she was to start serving the suspension, private respondent received a letter from the petitioners informing her of her termination from employment effective 25 February 1986. The letter, quoted verbatim, follows:

"In connection with the unauthorized purchases of jewelry items, and after the audit and inspection by the Internal Auditor; subsequent investigation clearly and sufficiently proves that:

- 1) You are (sic) properly and thoroughly informed of all company rules and policies yet you not only violated but abused them just the same by purchasing a considerable number of jewelry items;
- 2) When asked to present said items, it was found that they were purchased for persons not within your immediate family, of which only three (3) out of the fourteen (14) were shown, of which (sic);
- 3) You sought to cover up for the act by presenting additional piece (sic) of jewelry which when checked against the records, description was not included in the unauthorized purchases made. This alone was a very clear act of dishonesty.
- 4) That it was one of your responsibility (sic) to purchase items sold by individuals to the company, yet further investigation was made and it was learned that you were buying jewelries (sic) from Conti customers for your personal purpose right in the premises of Conti Pawnshop during business hours.
- 5) Your explanation on these matters has been found unsatisfactory.
- 6) Summing up all the above and considering the reports and records contained on file (indicating activities in?conflict with the interest of the company) -- that the violations are serious infractions to (sic) the existing rules and regulations with intentions of personal gain.

These acts of unfaithfulness and abuse leads (sic) management to LOSE ITS TRUST AND CONFIDENCE ON (sic) YOU which is a requisite in your position as appraiser thus deeming it necessary that your employment be terminated within 30 days from receipt of this letter and you are (sic) placed under suspension without pay until your termination which is on February 25, 1986."[2]

Thereafter, on 13 February 1986, the petitioners' personnel manager informed the Ministry of Labor of Olongapo City about the private respondent's termination effective 25 February 1986.

On 15 April 1986, private respondent filed with the Olongapo District Labor Office in Olongapo City a complaint for illegal dismissal against the petitioners. The Labor Arbiter required the parties to submit their respective position papers and other documentary evidence. On 29 July 1987, Labor Arbiter Vladimir PL. Sampang rendered

a decision[3] in favor of the private respondent (petitioner therein) and ordered the petitioners as follows:

- "1. To pay the unpaid wages of Petitioner from January 15, 1986 up to February 25, 1986 in the sum of Two Thousand Eight Hundred Sixty Six Pesos & Thirty Centavos (P2,866.30);
2. To immediately reinstate Petitioner to her former or equivalent position without loss of seniority rights and with full backwages and other benefits from the date of her illegal dismissal until fully reinstated, and should reinstatement become impossible due to strained relationship, to pay the separation pay of petitioner equivalent to her one (1) month salary or one-half (1/2) month salary per year of service whichever is higher, a fraction of at least six (6) months service considered as one (1) whole year in addition to backwages and other benefits;
3. To pay Petitioner moral and exemplary damages in the sum of Ten Thousand (P10,000.00) Pesos."

Aggrieved by the said decision, petitioners interposed an appeal before the public respondent NLRC. They alleged therein that the Labor Arbiter committed grave abuse of discretion and serious errors in his findings of fact which would cause them grave or irreparable damage and injury.

On 28 January 1988, the NLRC promulgated the challenged decision[4] affirming, with modification, the decision of the Labor Arbiter. By way of modification, the NLRC decreed the removal of the order for the reinstatement of the private respondent and deletion of the award of moral and exemplary damages in favor of the latter. The NLRC found it inappropriate to reinstate the private respondent because she was occupying a sensitive position in the business of the petitioners. Thus, to the latter, she had "ceased to be an effective tool in the furtherance of"[5] their business. The dispositive portion of the said decision reads:

"WHEREFORE, premises considered, the decision of the Labor Arbiter below is hereby modified as follows:

1. Respondent Conti Pawnshop is hereby ordered to pay complainant backwages equivalent to her two (2) years salary; plus separation pay computed at one (1) month's salary for every year of service, a fraction of at least six (6) months to be considered as one year.
2. The award for moral and exemplary damages is deleted for lack of factual and legal basis.

SO ORDERED."[6]

Their motion to reconsider the said decision having been denied in the public respondent's Resolution of 14 March 1988,[7] petitioners filed the instant special civil action for certiorari, raising therein this sole issue:

"THE RESPONDENT COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AND ERROR IN AWARDING BACKWAGES AND SEPARATION PAY THERE BEING A CLEAR BASIS FOR THE DISMISSAL FROM EMPLOYMENT OF THE PRIVATE RESPONDENT."[8]

Citing Article 283(c), now Article 282(c), of the Labor Code,[9] as amended, petitioners contend that loss of trust and confidence is a valid ground for terminating one's employment. The article reads:

"ART. 283. Termination by employer. -- An employer may terminate an employment for any of the following just causes:

x x x

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative."

In the Resolution of 22 February 1988,[10] this Court gave due course to the petition after the filing by the public respondent, through the Office of the Solicitor General, of its Comment, and by the petitioners of their reply to the latter. The parties were then required to submit their respective Memoranda.

Undoubtedly, an employer may terminate the services of an employee due to loss of trust and confidence. However, there must be some basis therefor.[11] In the language of the aforequoted Article 283(c) of the Labor Code, the same must be based on willful breach of the trust reposed in the employee by his employer. Ordinary breach will not suffice; it must be willful. Such breach is willful if it is done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently.[12] Elsewise stated, it must be based on substantial evidence and not on the employer's whims or caprices or suspicion; otherwise, the employee would eternally remain at the mercy of the employer. It should be genuine and not simulated; nor should it appear as a mere afterthought to justify earlier action taken in bad faith or a subterfuge for causes which are improper, illegal, or unjustified.[13] It 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.[14]

In the case at bar, the Labor Arbiter found untenable the grounds relied upon by the petitioners. He wrote:

"Anent the issue of whether Petitioner was illegally dismissed or not, we find that the defense of loss of trust and confidence advanced by Respondent is merely speculative, conjectural and devoid of factual basis, in fact and in law. The imputed alleged violation by the Petitioner of a privilege given to all employees wherein they are allowed to make purchases of jewelries (sic) at Conti at agent's price for their personal use and their immediate families, in that the Petitioner allegedly made purchases for her cousins, housemaid and godchildren has not been fully established by the Respondent, and except for the self-serving, gratuitous and hearsay statement of Mrs. Rosario Boquirin (sic), who is the Senior Technical Assistant of Respondent Plaza Conti, not an iota of proof has been presented to prove this imputation. On the contrary, in the Explanation/Reply submitted by Petitioner, it was clearly shown that the purchases were personally made by her relative (sic) directly from the sales personnel of Respondent and not by the Petitioner. Moreover, even granting that Petitioner has indeed, made purchases of jewelries (sic) for her distant relatives or who (sic) are not immediate members of her family, we see no wrong at all because the purchases were fully paid in accordance with the prescribed agent's price. Finally, assuming that the Petitioner has violated this employee's privilege, we believe that the penalty of dismissal is too severe, inhuman and highly unjustified because violation of said privilege has no direct relevancy or connection with her works (sic) as an Appraiser. At most, the privilege should have been taken away from her, instead of an outright and canibalistic (sic) dismissal from her work.

Likewise, the imputation that her records reveal that in the past, Petitioner has accepted fake five (5) (sic) items of jewelries in (sic) four (4) separate instances in a span of one (1) month with two (2) transactions each, from only one (1) person, and that a customer has allegedly told management that Petitioner purchased from her jewelries (sic) that she was going to sell, is too general, besides being hearsay and more of a product of a senile and moribund imagination, because if it were true, where are the records referred to? Why were they not presented in (sic) as evidence? How, where and when in the past were those items accepted and from whom has Petitioner accepted those fake items? Who was that customer who allegedly told management that Petitioner purchased jewelries (sic) she was going to sell? If there is any truth to this, why was not the Petitioner then immediately investigated and dismissed? Finally, the anonymous letter received by Respondent sometime on (sic) December 1985 implicating the Petitioner in buying jewelry at Conti premises for her own personal purpose and was (sic) not buying at all for the Respondent Conti, thereby depriving the latter of this particular business competing with it, is the (sic) mere figments (sic) of a very fertile halucination (sic) because such an anonymous letter is but a (sic) hearsay evidence and therefore, inadmissible. If there is any truth to this, again, why was not the Petitioner right then and there immediately investigated and dismissed if warranted?"[15]

The public respondent sustained these findings and conclusions of the Labor Arbiter, thus:

"After a careful scrutiny of the records of the case, We find for the complainant. Indeed complainant holds a sensitive position in respondent's business, but it must be noted that dismissal of an employee on the ground of

loss of trust and confidence must have some basis. All that the respondent submitted with respect to the alleged purchases of jewelries (sic) from a customer in the pawnshop premises for her personal ends was the anonymous letter that the respondent allegedly received. Such evidence is clearly hearsay and inadmissible. As to the alleged purchases of five (5) fake jewelries (sic), nothing in the records support (sic) such allegation except for the report of respondent's Senior Technical Assistant Rosario B. Boquiren. Granted such (sic) allegations were true, respondent should have investigated complainant upon discovery of the alleged offense. Respondent should have immediately called complainant's attention. Evidently, respondent failed to do this. Moreover, nowhere in the records of the case is there any indication that complainant was ever reprimanded or investigated. With respect to the lost equipments (sic), this charge was likewise not proven. The accusation is at most speculative and conjectural. On the matter of complainant's alleged abuse of the privilege extended to her by respondent, We believe that, granting that there was such abuse, dismissal of the complainant is too severe a penalty. We agree with the Labor Arbiter's conclusion that:

`x x x Assuming that petitioner has violated this employee's privilege, We believe that the penalty of dismissal is too severe, inhuman and highly unjustified because violation of said privilege has no direct relevancy or connection with her work as an appraiser. At most, the privilege should have been taken away from her, instead of an outright and canibalistic dismissal from her work (sic)."[16]

The above findings of fact by the Labor Arbiter and the public respondent are supported not merely by substantial, but by a clear preponderance of evidence. We find no reason to disturb such findings. Settled is the rule that findings of quasi-judicial agencies which have acquired expertise in the specific matters entrusted to their jurisdiction are accorded by this Court not only with respect but even finality if they are supported by substantial evidence.[17] Petitioners have not convinced Us that We should depart from this rule.

There is, however, something more in the conduct of the petitioners which dilutes the merits of their claims and dims their hope for support from this Court. They deprived the private respondent of her right to due process -- which is at the heart of the employee's right to security of tenure and is fully guaranteed by both the 1973 and 1987 Constitutions.[18]

Article 278, now Article 277, of the Labor Code of the Philippines, as amended by Batas Pambansa Blg. 130,[19] implements this guaranty of due process. The pertinent portion thereof reads:

x x x

"(b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just or authorized cause and without prejudice to the requirement of notice under Article 284 of this Code, the clearance to terminate employment shall no longer be necessary.

However, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Ministry of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer. The Ministry may suspend the effects of the termination pending resolution of the case in the event of a prima facie finding by the Ministry that the termination may cause a serious labor dispute or is in implementation of a mass lay-off."

The same guaranty is likewise embodied in Sections 2 to 6, Rule XIV, Book V of the Rules Implementing the Labor Code, to wit:

x x x

"SEC. 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.

SEC. 3. Preventive suspension. -- The employer may place the worker concerned under preventive suspension if his continued employment poses a serious and imminent threat to the life or property of the employer or of his co-workers.

SEC. 4. Period of suspension. -- No preventive suspension shall last longer than 30 days. The employer shall thereafter reinstate the worker in his former or in a substantially equivalent position or the employer may extend the period of suspension provided that during the period of extension, he pays the wages and other benefits due to the worker. In such case, the worker shall not be bound to reimburse the amount paid to him during the extension if the employer decides, after completion of the hearing, to dismiss the worker.

SEC. 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.

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

It is evident from the said provisions that the employer is required to furnish an employee who is to be dismissed two (2) written notices before such termination. The first is the notice to apprise the employee of the particular acts or omissions for which his dismissal is sought. This maybe loosely considered as the proper charge. The second is the notice informing the employee of the employer's decision to dismiss him. This decision, however, must come only after the employee is given a reasonable period from receipt of the first notice within which to answer the charge, and ample opportunity to be heard and defend himself with the assistance of his representative, if he so desires. This is in consonance with the express provisions of law on the protection to labor and the broader dictates of procedural due process. Non-compliance therewith is fatal^[20] because these requirements are conditions sine qua non before dismissal may be validly effected.^[21]

Although an employer has the right to dismiss an employee, the former should not be careless in exercising such right. The manner of dismissal should be in full accord with the law and cannot be left entirely to the whims of the employer for at stake is not only the employee's position, but also his means of livelihood.^[22]

In the instant case, petitioners violated the twin requirements of notice and hearing. It is clear that the private respondent was not afforded a reasonable time to answer the 10 January 1986 letter which was given to her on the same date. This letter gave her until the end of the same day to submit her explanation; she had, therefore, less than twenty-four (24) hours to prepare and submit the explanation. She did not even have the time to consult with a lawyer. Aside from this, she was not even given the opportunity to be heard. Two (2) days after receiving the notice of suspension, allegedly because petitioners were still evaluating her case, she was served with a notice of dismissal. The "suspension" was, therefore, a clever subterfuge to mask her immediate dismissal which was obviously already decided upon. Even the suspension has no basis since her continued employment posed no "serious and imminent threat to the life or property" of the petitioners or the private respondent's co-workers.^[23] Thus, the petitioners made a mockery of the solemn guarantee of due process.

The dismissal then of the private respondent was wrong and illegal. Ordinarily, reinstatement with backwages should be decreed. However, the former relief may no longer be feasible in this case. The antipathy and antagonism existing between the petitioners and the private respondent militate against the latter's

reinstatement;^[24] thus, such reinstatement will no longer serve any prudent purpose.^[25] Pursuant to settled jurisprudence, an award for backwages for three (3) years without qualification and deduction, and for separation pay at the rate of one (1) month salary for every year of service, would be in order.^[26] The challenged decision pegged the award of backwages at two (2) years only. It should be modified to three (3) years.

WHEREFORE, for lack of merit, the Petition is DISMISSED. The appealed decision (NLRC Case No. RAB-III-5-2673-86) is hereby AFFIRMED, subject to the modification as to backwages which shall be for three (3) years without any qualification and deduction.

This Decision shall be immediately executory.

Costs against the petitioners.

SO ORDERED.

Gutierrez, Jr., (Chairman), Bidin, Romero, and Melo, JJ., concur.

[1] Original Records, 19.

[2] Original Records, 20.

[3] Id., 155-162.

[4] Rollo, 28-33-A.

[5] Id., 33.

[6] Rollo, 33-33-A.

[7] Id., 34.

[8] Id., 85.

[9] P.D. No. 442.

[10] Rollo, 80.

[11] PNOC-Energy Development Corporation vs. NLRC, 201 SCRA 487 [1991]; Gubac vs. NLRC, 187 SCRA 412 [1990].

[12] Black's Law Dictionary, Fifth ed., 1434.

[13] General Bank & Trust Co. vs. Court of Appeals, 135 SCRA 569 [1985].

[14] Marina Port Services, Inc. vs. NLRC, 193 SCRA 420 [1991]; Hernandez vs. NLRC, 176 SCRA 269 [1989].

[15] Original Records, 159-161.

[16] Rollo, 32-33.

[17] Pagkakaisa ng mga Manggagawa vs. Ferrer-Calleja, 181 SCRA 119 [1990]; Chua vs. NLRC, 182 SCRA 353 [1990].

[18] Section 9, Article II, 1973 Constitution; Section 3, Article XIII, 1987 Constitution.

[19] Approved on 21 August 1981.

[20] National Service Corporation vs. NLRC and Credo vs. NLRC, 168 SCRA 122 [1988].

[21] Metro Port Service, Inc. vs. NLRC, 171 SCRA 190 [1989]; Ruffy vs. NLRC, 182 SCRA 365 [1990]; Tingson, Jr., vs. NLRC, 185 SCRA 498 [1990]; De Vera vs. NLRC, 200 SCRA 439 [1991].

[22] Bachiller vs. NLRC, 98 SCRA 393 [1980]; De Leon vs. NLRC, 100 SCRA 691 [1980].

[23] Section 3, Rule XIV, Book V, Rules Implementing the Labor Code, supra.

[24] Bautista vs. Inciong, 158 SCRA 665 [1988]; see also, CityTrust Finance Corp. vs. NLRC, 157 SCRA 87 [1988]; Quezon Electric Cooperative vs. NLRC, 172 SCRA 88 [1989]; Commercial Motors Corp. vs. Commissioners, 192 SCRA 191 [1990].

[25] Hernandez vs. NLRC, 176 SCRA 269 [1989].

[26] Bautista vs. Inciong, supra; Manila Midtown Commercial Corp. vs. Nuwhrain, 159 SCRA 212 [1988]; National Service Corp. vs. NLRC, supra.; Hernandez vs. NLRC, supra.; Commercial Motors Corp. vs. Commissioners, supra.; Torillo vs. Leogardo Jr., 197 SCRA 471 [1991].

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