

BENGUET CORPORATION, PETITIONER, VS. THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION (FOURTH DIVISION) AND PABLO CORALIS, RESPONDENTS.

G.R. No. 84974. May 08, 1992

Ponente: NARVASA, C.J.

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NARVASA, C.J.:

Private respondent Pablo Coralís, employed as a miner by petitioner Benguet Corporation since July 6, 1976, was dismissed by the latter on December 3, 1984 for "highgrading," or theft of gold ore. According to the notice of dismissal,[1] on November 13, 1984, he had been caught, red-handed as it were, while picking out and collecting pieces of high-grade ore inside a stope (excavation) in his employer's Acupan Mines in Itogon, Benguet, which was not his assigned workplace. He had signed a statement admitting his guilt in the investigation conducted on the same day.[2]

Three weeks later, on December 28, 1984, Coralís filed a complaint for illegal dismissal against Benguet Corporation,[3] in support of which he thereafter submitted his affidavit of February 8, 1985 to the effect that he had been made to sign his previous confession by one L.M. Belwa of the company's Acupan security office, without understanding or being informed of its contents and upon assurances of being allowed to return to work if he signed.[4]

The case was set for hearing following the filing of a motion to dismiss by Benguet Corporation. Position papers were thereafter filed, by Coralís on September 10, 1986, and by Benguet Corporation on October 30, 1986.[5] Then, on September 8, 1987, a decision was rendered by Executive Labor Arbiter Norma Olegario who rejected Coralís' protestations of innocence, found that he had been dismissed for cause, and threw out the complaint for lack of merit. Withal the Arbiter sought to mitigate what she called the "harshness" of the law in a manner that to her mind "would (not) obliterate the line that should divide those who had rendered faithful and efficient service * * * and those whose dismissals are for valid and just cause," by granting Coralís separation pay for only six, instead of his actual more than eight, years of service.[6]

Predictably, the decision did not sit well with Benguet Corporation, which found it self-contradictory and so professed in an appeal to the National Labor Relations Commission that dwelt, in the main, on the proposition that since Coralís' dismissal was found to have been for just cause, no separation pay was lawfully owed him and none should have been awarded.

Coralís, for his part, did not appeal. This notwithstanding, the NLRC to all intents and purposes opened the entire case to review when it took up and resolved, not only the question of whether or not the Executive Arbiter had correctly awarded Coralís separation pay notwithstanding her finding that he had been lawfully dismissed -- the only issue raised in Benguet Corporation's appeal -- but examined and resolved the basic issue of legality of Coralís' dismissal despite absence of any appeal as regards said finding of the Arbiter, as already stated.

In its judgment promulgated on May 31, 1988 and assailed in the present petition, the NLRC through its Fourth

Division reversed the appealed decision of the Executive Labor Arbiter, held that Coralís had been illegally dismissed and ordered his reinstatement without loss of seniority rights and diminution of benefits, and with back wages from the time of dismissal to actual reinstatement. It directed also that if reinstatement was no longer practicable, Coralís be paid separation pay equivalent to one month's salary for every year of service, a fraction of six months to be considered as one year for this purpose, in addition to backwages.[7]

In the present action, Benguet Corporation imputes to the NLRC grave abuse of discretion amounting to want of jurisdiction in resolving its appeal in the manner just set forth. It is correct. Respondent NLRC not only set at naught its own rules, but also disregarded relevant precedent when it reviewed and reversed the Arbiter Olegario's finding that Coralís was lawfully dismissed although that finding was never put in issue in the appeal.

The rules in question as they stood at the time[8] very clearly provided that:

“(o)nce the appeal is perfected in accordance with these Rules, issues not raised on appeal shall become final and executory, and the Commission shall limit itself to reviewing and deciding specific issues that were elevated on appeal.” (underscoring supplied)

Public respondent's present Rules provide somewhat differently in that they appear to reserve to said Commission the discretion to review on appeal issues not raised by the Appellants, viz.:

“(s)ubject to the provisions of Article 218 (of P.D. No. 442, as amended), once the appeal is perfected in accordance with these rules, the Commission may limit itself to reviewing and deciding specific issues that were elevated on appeal.”[9]

Whatever the effect of this last-cited proviso on appeals taken after the current Rules of which they are part went into effect -- which is not now inquired into -- -one thing is at least clear: it cannot be given retroactive application so as to validate the NLRC's reversing or setting aside the Arbiter's resolution of issues not raised in an appeal from the latter's decision, where such appeal was taken under the aegis of the earlier Rules, which quite peremptorily limited the NLRC's review to only those issues that were raised on appeal.

A strong analogy exists between this case and *Itogon--Suvoc Mines, Inc. vs. NLRC*[10] which, coincidentally, also involved alleged highgrading. There, the petitioning company had applied for clearance to terminate its employment of the private respondent for said offense. The Labor Arbiter had denied the application on the ground that ?????ere was no sufficient evidence to support the charge and ordered said respondent's immediate reinstatement with back wages and without loss of seniority. On appeal, the NLRC reversed the Arbiter and found sufficient evidence to decree the private respondent's severance for breach of trust with, however, entitlement to separation pay on equitable grounds. The petitioner appealed that decision to this Court, which held:

“It should be stressed at this juncture, that the findings of fact of respondent Commission may be deemed as accepted by private respondent, considering that said party did not file any motion for reconsideration of the aforementioned decision, much less appeal therefrom. The net result is that private respondent cannot now impugn the correctness of the findings of facts contained in the decision subject of this petition. The rule is well-settled that a party cannot impugn the correctness of a judgment not appealed from by him; and while he may make counter assignment of errors, he can do so only to sustain the judgment on other grounds but not to seek modification or reversal thereof, for in such case he must appeal.”[11]

It results that the only issue that the NLRC could resolve in the appeal before it was whether or not it was proper for the Arbiter to award Coralís separation pay notwithstanding her having found that said respondent had been lawfully dismissed for theft of his employer's property. In this regard, prevailing doctrine distinguishes between dismissals for “valid but not iniquitous” causes and those for serious misconduct or causes reflecting on the employee's moral character, upholding the propriety of giving separation pay in the former, but proscribing it in

the latter. The reason for the distinction is set forth in *Philippine Long Distance Telephone Co. vs. NLRC*[12] where this Court, after justifying such grant in principle not alone on considerations of equity but also of positive constitutional commands for the promotion of social justice and the protection of workers' rights, nonetheless said:

"The Court feels that distinctions are in order. We note that heretofore the separation pay, when it was considered warranted, was required regardless of the nature or degree of the ground proved, be it mere inefficiency or something graver like immorality or dishonesty. The benediction of compassion was made to cover a multitude of sins, as it were, and to justify the helping hand to the validly dismissed employee whatever the reason for his dismissal. The policy should be re-examined. It is time we rationalized the exception, to make it fair to both labor and management, especially to labor.

"There should be no question that where it comes to such valid but not iniquitous causes as failure to comply with work standards, the grant of separation pay to the dismissed employee may be both just and compassionate, particularly if he has worked for sometime with the company. For example, a subordinate who has irreconcilable policy or personal differences with his employer may be validly dismissed for demonstrated loss of confidence. A working mother who has to be frequently absent because she has also to take care of her child may also be removed because of her poor attendance, this being another authorized ground. It is not the employee's fault if he does not have the necessary aptitude for work but on the other hand the company cannot be required to maintain him just the same at the expense of the efficiency of its operations. He too may be validly replaced. Under these and similar circumstances, however, the award to the employee of separation pay would be sustainable under the social justice policy even if the separation is for cause.

"But where the cause of the separation is more serious than mere inefficiency, the generosity of the law must be more discerning. There is no doubt it is compassionate to give separation pay to a salesman if he is dismissed for inability to fill his quota but surely he does not deserve such generosity if his offense is misappropriation of the receipts of his sales. This is no longer mere incompetence but clear dishonesty. A security guard found sleeping on the job is doubtless subject to dismissal but may be allowed separation pay since his conduct, while inept, is not depraved. But if he was in fact not really sleeping but sleeping with a prostitute during his tour of duty and in the company premises, the situation is changed completely. This is not only inefficiency but immorality and the grant of separation pay would be entirely unjustified.

"We hold that henceforth separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft of illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice.

"The policy of social justice is not intended to countenance wrongdoing simply because it is committed by the underprivileged. At best it may mitigate the penalty but it certainly will not condone the offense. Compassion for the poor is an imperative of every humane society but only when the recipient is not a rascal claiming an undeserved privilege. Social justice cannot be permitted to be the refuge of scoundrels any more than can equity be an impediment to the punishment of the guilty. * * *."

Subsequent decisions have uniformly hewed to this ruling, as pointed out in *Cosmopolitan Funeral Homes, Inc. vs. Maalat*.[13]

WHEREFORE, the decision of the NLRC, review of which is sought, is REVERSED and SET ASIDE. That of the Executive Labor Arbiter subject of said decision, is reinstated, but only insofar as it upholds the validity of private respondent Pablo CoraIis' dismissal, and striking therefrom the award of separation pay, said respondent not being entitled thereto. No pronouncement as to costs.

SO ORDERED.

Cruz, Griño-Aquino, Medialdea, and Bellosillo, JJ., concur.

[1] Rollo, p. 27

[2] Id., p. 32

[3] NLRC Case No. RAB-I-0331-84

[4] Rollo, pp. 32-33

[5] Rollo, p. 55

[6] Id., pp. 33-34

[7] Rollo, pp. 54-65

[8] Rule VIII, sec. 5(c), Revised Rules of the National Labor Relations Commission, promulgated November 5, 1986 and made effective fifteen (15) days after announcement of their adoption and promulgation in newspapers of general circulation; said Rules stayed in effect until a new set of rules was adopted on August 31, 1990.

[9] Sec. 2(c), current Rules, *supra*

[10] 117 SCRA 523

[11] citing *Lianga Lumber Co. v. Lianga Timber Co.*, 76 SCRA 197; *David vs. de la Cruz*, 103 Phil. 380; *Aparri vs. CA*, 13 SCRA 611; *Bunge Corporation and Universal Commercial Agencies vs. Elena Camenforte & Co.*, 91 Phil. 861; *Gorospe vs. Penaflorida*, 101 Phil. 886

[12] 164 SCRA 671

[13] 187 SCRA 108, citing *Philippine National Construction Corporation vs. NLRC*, 170 SCRA 207; *Eastern Paper Mills, Inc. vs. NLRC*, 170 SCRA 597; *Osias Academy vs. DOLE*, 172 SCRA 458; and *Nasipit Lumber Co., Inc. vs. NLRC*, 177 SCRA 93

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