

ANSCOR TRANSPORT & TERMINALS, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND POMPEI D. CRISOSTOMO, RESPONDENTS.

G.R. No. 85894. September 28, 1990

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

The petitioner, Anscor Transport and Terminals, Inc., prays for the reversal of the decision of the respondent National Labor Relations Commission, in MNC-NCR Case No. 4-1252-87 thereof, entitled "Pompei D. Crisostomo, Complainant-Appellee, versus Anscor Transport and Terminal, Inc., Respondent-Appellant". The dispositive portion thereof reads as follows:

WHEREFORE, the appeal is hereby DISMISSED for lack of Merit and the decision appealed from is Affirmed, subject to the modification as decreed above. No costs.

SO ORDERED.¹

The decision of the National Labor Relations Commission affirmed that of the labor arbiter, granting the private respondent's, Pompei Crisostomo's, prayer in his complaint for illegal dismissal, subject to the modification that "on account of the obvious strained employer-employee relationship between the parties,"² the private respondent shall not be reinstated but paid separation pay.

The facts are undisputed.

The private respondent, Pompei Crisostomo, was hired by the petitioner on October 11, 1982 to drive a truck. On October 25, 1984, Crisostomo set out to deliver reportedly 450 bags of fertilizer from the Anscor Paco Office, in Manila, to Mandaluyong, arriving thereat an hour later. When the cargo was unloaded in Mandaluyong, Anscor cargo handlers allegedly found that the goods were short by twenty-nine bags.

On October 30 and November 6, 1984, Crisostomo was made to face an "investigative committee", upon charges of theft, which he denied and wherein he claimed that the bags might have been overcounted upon loading. On November 7, 1984, Anscor dismissed him.

On April 4, 1986, Crisostomo went to the labor arbiter on a complaint for illegal dismissal. On January 4, 1988, the labor arbiter ordered his reinstatement with backwages. On October 28, 1988, the respondent National Labor Relations Commission affirmed, save for the modifications earlier adverted to, the labor arbiter's decision.

On December 5, 1988, Anscor filed the instant petition, alleging that:

A. RESPONDENT NLRC ERRED IN AFFIRMING THE LABOR ARBITER'S FINDINGS THAT HEREIN PETITIONER FAILED TO CLEARLY ESTABLISH THAT HEREIN PRIVATE RESPONDENT WAS DIRECTLY RESPONSIBLE FOR THE SHORTAGE OF HIS CARGO ON OCTOBER 25, 1984.³

B. THE HON. NLRC ERRED IN FINDING THAT NO FORMAL INVESTIGATION WAS CONDUCTED

BY HEREIN PETITIONER ON POMPEI CRISOSTOMO.⁴

C. THE NLRC ERRED IN AWARDING P. CRISOSTOMO BACKWAGES IN THE AMOUNT OF P16,956.00 AND SEPARATION PAY.⁵

The lone issue is whether or not the respondent National Labor Relations Commission, in rendering the challenged decision, has been guilty of a grave abuse of discretion to warrant certiorari.

The first assigned error pertains to facts, that is, whether or not Pompei Crisostomo had been guilty of pilferage to justify Anscor's action. We have held, however, that the question of "facts" is, as a general rule, the sole realm of an administrative body,⁶ so long as there is substantial evidence to back up its action.⁷

We reject, indeed, Anscor's claims that in absolving Crisostomo, the respondent Commission had misapprehended the facts or had speculated merely on the events. We do not find to be well-taken its reliance on the pieces of evidence supposedly unearthed during the investigation of the case pointing allegedly to Crisostomo's culpability. Cargo receipt No. 10485, which Crisostomo allegedly signed and which allegedly indicated that 450 bags of fertilizer were loaded on board the delivery truck, is not sufficient proof that 450 bags were, in fact, stowed on the truck. Although the private respondent signed the receipt, he is not necessarily bound by its contents, or does he guarantee its correctness, in the absence of any showing that he took part in the loading of the cargo. As the Solicitor General submits, "[i]t was only after the loading was done and the cargo was covered, tied, and ready for delivery that the driver was called upon to sign the cargo receipt"⁸ "To lay the blame,"⁹ he adds, "on the driver just because he signed the cargo receipt is grossly unfair to say the least."¹⁰

The alleged statements of Anscor's checkers (surveyors) that they loaded 450 bags on Crisostomo's delivery truck are nothing conclusive. First, Anscor's checkers could have simply overcounted the cargo. Second, it was quite unlikely that they would admit a mistake--and risk charges of negligence--that they miscounted the bags.

The Court indeed finds the evidence inconclusive as to whether or not there was in fact a loss sustained by Anscor. As we indicated, Anscor could have been mistaken, from the beginning, that it had 450 bags, when it possibly had just 421.

To hold, therefore, Crisostomo for theft is unwarranted, first, because Anscor itself can not be sure that twenty-nine bags were actually missing, and second, because no one saw Crisostomo in the act of stealing.

It is true that in administrative proceedings, the guilt of a party need not be shown by proof "beyond reasonable doubt" required by our penal laws, yet, there must be substantial evidence to support it. In this connection "substantial evidence" has been defined as follows:

Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.¹¹

The fact that there was "evidence" (assuming it was "evidence") that the petitioner was liable, we do not find it to be evidence that is substantial enough along the teaching of *Ang Tibay*. As we said, Anscor itself can not say for sure that it had in fact lost twenty-nine bags of fertilizer, and if the *corpus delicti*, as it were, was doubtful, to pin responsibility for the "loss" on another is even more doubtful. Contrary to Anscor's opinion, the alleged evidence against Crisostomo was hardly "airtight",¹² assuming it constitutes evidence at all.

Although loss of confidence is a valid cause to terminate an employee,¹³ it must however rest on an actual breach of duty committed by the employee and not on the employer's caprices.¹⁴

The Court finds little necessity in dwelling lengthily on Anscor's claims that contrary to the respondent Commission's findings, Crisostomo had not been denied due process. For assuming that the respondent had

indeed been given his day in court,¹⁵ we can not accept, nonetheless, the evidence unravelled during the investigation of the case at the plant level, as evidence, indeed, that the respondent is guilty. As we said, Anscor's findings in this regard are inconclusive, and can not reasonably warrant termination of employment.

In this connection, we can not give weight to the respondent Commission's conclusion that "[h]ad it not been for the apparent denial of due process attendant to the dismissal of herein complainant, We could have sustained the dismissal of complainant on account of loss of confidence."¹⁶ As this Court stated, Anscor has successfully adduced no acceptable proof to buttress its "loss of trust" on the petitioner. It is therefore of little moment that the private respondent did conduct investigation proceedings because that is but one step. What is more important is that notwithstanding such proceedings, Anscor had failed to demonstrate the private respondent's liability in a manner satisfactory to this Court. The respondent Commission's above aside was totally unnecessary and the Court regrets it.

The Court finds, however, merit in the last assigned error, insofar as it assails the grant of separation pay rather than backwages. We also find that the respondent labor body committed an error in modifying the labor arbiter's decision decreeing reinstatement.

The Court does not agree that the cases of *Divine Word High School v. NLRC*¹⁷ and *Asiaworld Publishing House, Inc. v. Ople*¹⁸ are applicable to this case, in terms of "impracticability" of reinstatement.

In *Divine Word*, it was held:

Nonetheless We hesitate ordering the reinstatement of private respondent Luz Ballano Catenza as a high school teacher in the petitioner high school, which is a Catholic institution, serving the educational and moral needs of its Catholic studentry. While herself innocent, the continued presence of Mrs. Catenza as a teacher in the school may well be met with antipathy and antagonism by some sectors in the school community.¹⁹

In both cases, it must be stressed that the aggrieved employees occupied responsible positions (a high school teacher in *Divine Word*, a vice-president in *Asiaworld*), in which a consistent level of confidence is required. In the case at bar, however, the private respondent was a company driver, a position that does not obviously call for the trust management reposes, say, upon a vice-president (as in *Asiaworld*). Be that as it may, *Asiaworld* in fact tells us:

If the respondent had been a laborer, clerk, or other rank and file employee, there would be no problem in ordering her reinstatement with facility. But she was Vice President for Marketing of *Asiaworld*. An officer in such a key position can work effectively only if she enjoys the full trust and confidence of top management.²⁰

And obviously, *Divine Word* and *Asiaworld* were decided on the merits of their peculiar conditions. These conditions, however, are, to repeat, peculiar, and can not be applied universally. Otherwise, reinstatement can never be possible simply because some hostility is invariably engendered between the parties as a result of litigation. That is human nature.

WHEREFORE, the petition is hereby DISMISSED. The Decision, dated October 28, 1988, of the respondent National Labor Relations Commission is AFFIRMED subject to the modification that the petitioner is hereby ORDERED to pay to the private respondent backwages based on the latest pay scale for drivers, equivalent to three (3) years with no deductions or qualification, and that the petitioner is ORDERED to reinstate the private respondent. No costs.

SO ORDERED.

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

1 Rollo, 57.

2 Id.

3 Id., 4.

4 Id., 12.

5 Id., 15.

6 See e.g., Philippine Associated Smelting and Refinery Corporation (PASAR) v. National Labor Relations Commission, Nos. 82866-67, June 29, 1989, 174 SCRA 550, and cases mentioned therein.

7 Supra; see also Ang Tibay v. Court of Industrial Relations, 69 Phil. 635 (1940), to which we return and return.

9 Id.

10 Id.

11 Ang Tibay v. Court of Industrial Relations, supra, 642.

12 Rollo, id., 6.

13 Batas Blg. 130, sec. 15.

14 Hernandez v. National Labor Relations Commission, G.R. No. 84302, August 10, 1989; Starlite Plastics v. National Labor Relations Commission, G.R. No. 78491, March 16, 1989.

15 It appearing that he was given the opportunity to face his accusers and to belie the charges against him. (See Adamson & Adamson, Inc. v. Amores, No. 58292, July 23, 1987, 152 SCRA 237.)

16 Rollo, id., 56.

17 No. 72207, August 6, 1986, 143 SCRA 346.

18 No. 56398, July 23, 1987, 152 SCRA 219.

19 Divine Word High School v. NLRC, supra, at 350.

20 Asiaworld Publishing House, Inc. v. Ople, supra, at 227.

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