

JOSE A. TAN, JR., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND CARNATION PHILS., INC., RESPONDENTS.

G.R. NO. 85919. March 23, 1990

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

This is another case where the principal issue is whether or not an employee was given due process when the public respondent sustained his dismissal from employment without prejudice to separation pay.

Petitioner questions the Derision dated May 18, 1987 promulgated by the Second Division of the National Labor Relations Commission[1] in NLRC-NCR Case No. 10-3583-84, entitled "Jose A. Tan, Jr. vs. Carnation Phils. Inc." which modified the Decision of Labor Arbiter Alex Arcadio Lopez in the same case, with dispositive portion as follows:

"From the foregoing discussion, it is clear that complainant was dismissed without due process and in gross violation of the law. Considering however the existence of just cause for complainant's discharge from employment, it is but fair and fitting that respondent be held liable by way of penalty in the payment of termination pay complainant's favor.

Regarding the fourth assigned error, suffice it to state that for the aforesaid reasons, any further discussion and elucidation on the matter would be an exercise in futility.

WHEREFORE, the appealed Decision is hereby modified, directing respondent to pay complainant separation pay equivalent to one month salary for every year of service, a fraction of six (6) months being considered as one (1) whole year.

SO ORDERED."[2]

The Decision dated July 16, 1986 rendered by the labor arbiter, has the following dispositive portion:

"In view of all the foregoing, it is clear that complainant's termination was illegal and that he should be reinstated to his former position in the company with backwages.

WHEREFORE, judgment is hereby rendered directing respondent or its successor-in-interest to reinstate complainant to his former position, with full backwages counted from April 26, 1984 until reinstated, based on his basic rate of P2,000.00 a month, without loss of seniority rights and/or other benefits.

SO ORDERED."[3]

The facts as found in the Decision of the labor arbiter are as follows:

"This case refers to a complaint for illegal dismissal filed by complainant, Jose A. Tan, Jr., against the respondent, Carnation Philippines, Inc.

This case was scheduled for several hearings during which this Labor Arbiter explored the possibility of an amicable settlement but to no avail. There being no settlement, the complainant moved that a formal trial be

conducted. Considering, however, the repeated failure of respondent's witnesses to appear, complainant, to avoid any further delay, agreed to submit the case for resolution on the basis of position papers and other documentary evidence which the parties earlier submitted.

The position paper, memorandum and documentary evidence submitted by complainant show that he was hired by the respondent on September 1, 1981, as a Territory Salesman until his termination by respondent on August 20, 1984. He was receiving the monthly salary of P2,000.00. x x x.

On April 26, 1984, respondent issued to complainant a memorandum advising the latter of his preventive suspension for 30 working days effective on April 26, 1984 pending release of other findings conducted in complainant's area. On March 9, 1984, complainant challenged his suspension as without legal and factual basis and demanded the immediate lifting thereof. On June 4, 1984, complainant demanded immediate reinstatement and payment of his full backwages as his preventive suspension had ended on May 26, 1984. Despite the expiration of the 30-day suspension of complainant, respondent refused to reinstate him. On June 23, 1984, respondent sent complainant a letter requiring him to explain why he should not be terminated for cause. On July 2, 1984, complainant asked respondent to furnish him with a copy of the audit report to enable him to intelligently prepare and submit his explanation. Respondent refused to furnish complainant a copy of the audit report despite repeated request. On August 6, 1984, respondent, after complainant had wrote (sic) them another letter dated July 11, 1984, furnished complainant some documents but without the audit report, which was being cited and used by respondent as the basis of its charges against complainant. On September 19, 1984, complainant submitted his explanation to the respondent. Subsequent to the submission of complainant's explanation, he received a termination letter dated August 20, 1984 for his alleged involvement in the irregularities mentioned in respondent's letter dated June 23 and August 6, 1984. Complainant said he has no participation in the renting of a Basilio and the Center Warehouses as these warehouses had long been used long before [sic] his employment with respondent. Complainant had no knowledge of any stocks that were diverted in violation of company practice since all stocks were released with the approval of the respondent and were subsequently delivered/sold to the dealers as duly approved and invoiced by the respondent. The release of stocks were all made with the authorization of complainant's supervisor; that whatever stocks released by complainant were fully accounted for and paid by the respondent. Complainant did not violate any company rule or policy that would justify his termination.

On the other hand, respondent in its position paper/memorandum alleged that complainant was terminated for cause. Specifically, respondent alleged that complainant was assigned to cover the dealers located in Pasay, Paco, Makati and San Juan, Metro Manila. From August to September 1983, complainant allegedly booked sales orders which contain forged signatures of dealers, which sales orders were used by the company as basis or preparing/issuing invoices. These sales invoices which reflected the falsified sales order were used by complainant to unlawfully effect release of stocks from the respondent's warehouse which were then diverted to the two (2) bonded warehouses rented by complainant, namely, Center and Basilio Warehouses. On October 17, 1983, complainant authorized the release of 500 cases of filled evap (orated milk) to a certain Mr. Fred Hockian, a dealer in another area. On another occasion, complainant authorized the withdrawal of 1,000 cases of filled evap (orated milk) to Mr. Hockian. Complainant also committed another unlawful act by his failure to return to the company returned stocks from Leonardo Foodarama valued at P4,003.39. Complainant further committed (an) unlawful and prejudicial act consisting of unauthorized substitution of payments. Respondent said that as a result of these various activities of complainant, the company's audit showed through confirmation of dealers in the affected area that accounts which appeared outstanding in the company's books have already been paid for.

The only issue to be resolved in this case is whether or not there is legal justification for complainant's dismissal.

Petitioner assigns the following jurisdictional errors allegedly committed by the public respondent NLRC:

"1. Respondent NLRC gravely abused its discretion amounting to lack of jurisdiction in declaring that there is just cause for dismissal of petitioner after finding that the suspension which preceded the dismissal is illegal.

2. Respondent NLRC gravely abused its discretion amounting to lack of jurisdiction in declaring that there is just cause for dismissal of petitioner despite the failure of the employer to submit the alleged Audit Report which is the basis of the suspension and dismissal of petitioner.

3. Respondent NLRC gravely abused its discretion amounting to lack of jurisdiction in justifying the existence of just causes for dismissal despite compliance by petitioner with existing rules and practice and sufficient explanation on the imputed but baseless charges.

4. Respondent NLRC gravely abused its discretion amounting to lack of jurisdiction in not finding that the dismissal is discriminatory."[4]

In the questioned decision of the NLRC, although it ultimately found that there was a just cause for the petitioner's discharge from employment, it agreed with the labor arbiter that petitioner was not accorded ample opportunity to explain his side and that he was dismissed without due process and in gross violation of the law.[5]

The Solicitor General in a manifestation in lieu of comment joined the cause of the petitioner by recommending that petitioner be reinstated with backwages as he had been illegally dismissed.

Before an employee can be dismissed he must be given a written notice and opportunity to be heard with the assistance of his representative as provided for in Article 278 of the Labor Code as amended by Batas Pambansa Blg. 130 which provides as follows:

"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 Art. 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 (now Department) 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."

Further, Sections 2 and 5 of the Implementing Rules of Batas Pambansa Blg. 130, states:

'Section 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.

Section 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."

In this case petitioner was denied adequate notice of the charges against him as he was not given a copy of the auditor's report containing the details of the charges. He repeatedly requested private respondent to give him a copy of said report but private respondent adamantly refused to do so. Moreover, petitioner requested to be given time to submit his answer but private respondent immediately dismissed him without waiting for his answer.

While the law recognizes the right of an employer to dismiss employees in warranted cases, the law frowns upon the arbitrary and whimsical exercise when employees are not accorded due process.[6]

Since there is no doubt that petitioner was illegally dismissed by private respondent without due process he should be reinstated without loss of seniority rights and backwages computed from the time his compensation was withheld from him up to the time of his reinstatement,[7] but his backwages must not exceed three (3) years. However, considering that the reinstatement of petitioner may not be practicable due to the loss of confidence of private respondent in petitioner and the serious breach in their relationship, petitioner instead of reinstatement should be awarded the corresponding separation pay.

WHEREFORE, the petition is GRANTED. The Decision of the National Labor Relations Commission in NLRC-NCR Case No. 10-3583-84 dated May 18, 1987 is SET ASIDE. The Decision of the labor arbiter dated July 16, 1986 is reinstated and modified in that petitioner is awarded backwages of three (3) years and instead of reinstatement, he is also awarded separation pay equivalent to one (1) month salary for every year of service, a fraction of six (6) months being considered as one (1) whole year. Costs against private respondent.

This decision is immediately executory.

SO ORDERED.

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

[1] Presiding Commissioner Daniel M. Lucas, Jr., ponente, concurred in by Commissioners Domingo H. Zapanta and Oscar N. Abella.

[2] Pages 41-42, Rollo.

[3] Pages 31-32, Rollo.

[4] Pages 7-8, Rollo.

[5] Pages 40 and 41, Rollo.

[6] Philippine Refining Co. Inc. vs. Garcia, 18 SCRA 107 (1966).

[7] Article 279.

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