

PHILIPPINE NATIONAL CONSTRUCTION CORPORATION TOLLWAYS DIVISION, EDUARDO OLAGUER AND CESAR D. TEMPLO, PETITIONERS, VS. THE NATIONAL LABOR RELATIONS COMMISSION (FOURTH DIVISION) A...

G.R. No. 86595. April 17, 1989

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

The petitioners filed this petition for certiorari to plead for reversal of the decision dated November 10, 1988 of the National Labor Relations Commission in NLRC-NCR Case No. 00-05-01858-87, entitled "Arnulfo H. Macasaet vs. PNCC-Tollways Division and/or Eduardo B. Olaguer-President and Cesar D. Templo, Head-Tollways Division," for grave abuse of discretion in holding that the dismissal on June 25, 1987, of the private respondent, Arnulfo Macasaet, from his position as manager/head of the petitioner's Operation and Maintenance of Electronics Equipments and Communication Systems (OMEECS) of the Tollways Division, South Luzon Expressway was illegal and in ordering the petitioner Philippine National Construction Corporation (or PNCC) to pay him backwages and separation pay in lieu of reinstatement, plus attorney's fees. The dispositive part of the NLRC's decision reads as follows:

"WHEREFORE, the decision appealed from is partially AFFIRMED with respect to the findings of the Labor Arbiter that complainant was deprived of due process in the manner of his dismissal from the service and hereby declare that respondent was guilty of illegal dismissal of complainant. The award for separation benefits in favor of complainant is also upheld in lieu of the latter's reinstatement, with the modification by ordering and directing respondents to pay complainant separation pay equivalent to one (1) month pay based on his latest salary for every year of service to respondent company, and to pay complainant backwages effective June 15, 1987 up to the date of the promulgation of this judgment. Respondent is further assessed payment of attorney's fees fixed at five (5%) percent of the money award.

"The portion of the assailed decision finding the dismissal of complainant to be for a lawful cause is hereby Vacated and Set Aside.

"All other claims are hereby dismissed for lack of factual basis.

"With costs against respondents." (p. 146, Rollo.)

The Labor Arbiter found that Macasaet was dismissed without due process because he was placed under preventive suspension upon service to him of the notice dated May 25, 1987 charging him with serious misconduct and dishonesty, and terminating his services effective June 25, 1987, without giving him an opportunity to defend himself in an appropriate investigation. He also found that "respondents failed to establish the charge of overstocking," (p. 101, Rollo) but, based on the affidavit of another employee, Jose Baltazar, the Labor Arbiter opined that PNCC had reason to dismiss Macasaet for misconduct when the company's radio licenses were not renewed despite the cash advance of P5,460 that Macasaet obtained for that purpose.

On appeal by PNCC, the NLRC set aside the Labor Arbiter's finding that there was lawful cause for Macasaet's dismissal. The NLRC noted that "in ruling on the alleged misconduct of herein complainant (Macasaet), the Labor Arbiter greatly relied on the sworn statement of Jose Baltazar, the subordinate supervisor of complainant, which the Arbiter admitted and considered without affording herein complainant the opportunity to refute or offer any rebuttal evidence." The NLRC observed that "this Act of the Arbiter amounted to grave abuse of discretion and denial of herein complainant of his right to procedural due process (*Baguio Country Club vs. NLRC*, 118 SCRA 557, 562.)" (p. 144, Rollo.) The NLRC ruled that since the manner of dismissing the employee was "oppressive and contrary to law," (p. 143, Rollo) the dismissal was illegal "even if the employer may have had some justifiable grounds to dismiss the employee." (Ibid.) It relied on the decisions of this Court in *AHS/Philippines Employees Union (FFW) vs. NLRC*, 149 SCRA 5; *Reme???? Garments Mfg. vs. Minister of Labor*, 135 SCRA 167; *De Leon vs. NLRC*, 100 SCRA 961; and *Century Textile Mills, Inc. vs. Pati*, G.R. No. 77859, May 25, 1988, where We ruled that -

"The twin requirements of notice and hearing constitute essential elements of due process in cases of employee dismissal; the requirement of notice is intended to inform the employee concerned of the employer's intent to dismiss and the reason for the proposed dismissal; upon the other hand, the requirement of hearing affords an employee an opportunity to answer his employer's charges against him and accordingly to defend himself therefrom before dismissal is effected. Neither of these two requirements can be dispensed with without running afoul of the due process requirement of the 1987 Constitution." (*Century Textile Mills, Inc. vs. NLRC*, et al., G.R. No. 77859, May 25, 1988.)

"Right to dismiss should not be confused with the manner in which such right is exercised. It must not be oppressive and abusive since it affects one's person and property." (*Bonifacio de Leon vs. NLRC*, et al., 100 SCRA 691.)

The NLRC presumably considered Macasaet's arguments in his appeal memorandum (which the petitioner did not refute) showing that he was not to blame for the non-payment of the license fees on or before the deadline on November 30, 1986. Jose Baltazar, to whom the P5,460 was given by Macasaet, failed to pay the license fees because, as admitted in PNCC's position paper, Baltazar was advised by Engr. Cuenca of the National Telecommunications Commission (or NTC) to apply for the extension of the licenses, which he did. That PNCC had to pay P19,634.02 (instead of P5,460) was not due to any penalty charges (falsely alleged by PNCC) but due to the fact (shown by its own receipts) that: (1) NTC charged P1,050 for the change of name of the corporation from "CDCP" to "PNCC"; (2) increased the inspection fee from P1,265 to P6,194.51; and (3) charged P12,389.51 for the extension of the license to cover the period of June 5, 1985 up to November 30, 1987 (p. 117, Rollo).

The real reason for his dismissal, according to Macasaet, was Olaguer's desire to overhaul the corporation as soon as he was installed as its new president after the EDSA revolution. To make matters worse, Olaguer was piqued when Macasaet and his immediate superior, Andres Sebastian, then Vice-President of the Tollways Division (until he was shortly replaced by petitioner Cesar Templo), were lukewarm toward Olaguer's proposal to purchase new toll collection equipment and integrate expensive weighing scales in the tollways. They suggested that the viability of those proposed "improvements" and their impact on the fiscal condition of the company be studied first. It turned out that Olaguer had already contacted a foreign supplier of the equipment, GCH International, which sent representatives to the meeting of the PNCC technical committee.

Olaguer was further infuriated when his interrogation of Macasaet failed to yield any damning evidence of wrongdoing against Sebastian. He called Macasaet names and demanded that he resign. When Macasaet did not comply, he was summarily dismissed.

The NLRC was convinced that the charge of dishonesty against Macasaet was not proven. It observed that "there

appears to be some doubt on the alleged misconduct of complainant. There is no showing that he misappropriated the funds in his possession. Secondly, his only fault, if at all, is simple negligence that would not justify the harsh penalty of dismissal." (p. 145, Rollo.)

Mindful, however, of the strained relations between the parties, the NLRC granted Macasaet separation pay of one month for every year of service in lieu of reinstatement, plus backwages from the time of his dismissal on June 25, 1987 up to the date of its decision, November 10, 1988. Its decision is not tainted with grave abuse of discretion for it finds support in the decision of this Court in *Asiaworld Publishing House, Inc. vs. Ople*, G.R. No. 56398, July 23, 1987, 152 SCRA 219, where severance pay was awarded to the illegally dismissed employee in lieu of reinstatement.

WHEREFORE, the petition for certiorari is dismissed with costs against the petitioners.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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