

MILAGROS I. DOLORES, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (FIFTH DIVISION) SAN MIGUEL CORPORATION AND PETRONILO O. JULIANO, RESPONDENTS.

G.R. No. 87673. January 24, 1992

Ponente: PARAS, J.

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PARAS, J.:

These petitions were consolidated pursuant to the resolution of this Court dated June 5, 1989 (p. 83, Rollo in G.R. No. 87673). Both petitions seek to annul the decision* of the Fifth Division of the National Labor Relations Commission (NLRC for brevity) dated January 31, 1989 which affirmed with modification the decision of Labor Arbiter Pacita del Rosario dated June 30, 1988 in NLRC-NCR Case No. 2-420-87 entitled "Milagros I. Dolores vs. San Miguel Corporation and Petronilo O. Juliano", and the subsequent resolution of the same Commission dated March 8, 1989 which denied the respective Motions for Reconsideration of the parties.

The antecedent facts of this case are as follows:

Milagros I. Dolores was hired by San Miguel Corporation (hereinafter referred to as SMC for brevity) as Chemist on August 21, 1965. She was promoted to Senior Chemist on October 1, 1973, then to Senior Research Chemist on December 1, 1976 and finally, to Head, Technical Information, Corporate Research and Development (CR & D) on October 29, 1984. During her stint, she received merit increases due to her satisfactory job performance and the latest salary increase in the amount of P1,285.00 a month was given to her on January, 1986 for her technical competence and dedication as borne out by her 1985 Performance Appraisal. At the time of her termination on December 1, 1986, she was receiving a monthly salary of P7,715.00.

On September 16, 1986, she filed an application for leave of absence for two (2) months, specifically from September 30 to November 28, 1986 in order to attend a six (6) week course in French language at the Alliance de Franciase de Paris (France) at her own expense. Pursuant to company rules and regulations, she submitted two (2) Personnel Leave Authority forms corresponding to: (1) 14 days vacation from September 30 to October 16, 1986 (regular annual leave); and (2) 34 1/2 days leave with permission without pay (LWOP) from October 17 to November 28, 1986. She submitted a formal request together with the said Personnel Leave Authority forms to her immediate superior Dr. Petronilo O. Juliano, Asst. Vice-President and Director, CR & D, and furnished copies of said request to Mr. Manuel Mendez, Vice-President and Manager who is the immediate superior of Dr. Juliano, and Mr. J. Punsalang, MSE, Personnel Officer.

On September 22, 1986, Dr. Juliano issued a memo limiting Ms. Dolores' leave to once (1) calendar month due to the anticipated heavy workload on the last quarter of the year and returned her Personnel Leave Authority forms to be revised accordingly. On the same day, she submitted a request for reconsideration together with the two (2) Personnel Leave Authority forms to Dr. Juliano because the duration of her intended study would exceed one (1) month. On September 30, 1986, Ms. Dolores left for Paris, France without receiving any formal denial to her request for reconsideration and promptly returned to Manila on November 30, 1986.

On her first working day on December 2, 1986, Mr. Conradino Santos, Administrative Supervisor, CR & D, presented to her Dr. Juliano's letter dated November 25, 1986 informing her of her termination effective December 1, 1986 for alleged continuous absence without permission but with retirement benefits.

On February 4, 1987, Milagros Dolores filed a complaint before the NLRC challenging the propriety of her dismissal which was docketed as NLRC-NCR No. 2-420-87.

The Labor Arbiter found that the circumstances of the case negate the existence of a sufficient justifiable cause for dismissal and ordered the payment of separation pay and backwages as well as actual and moral damages. The dispositive portion of the decision reads:

"WHEREFORE, premises considered, respondent San Miguel Corporation is hereby adjudged to pay complainant Milagros Dolores, the total sum of Two Hundred Eight Thousand One Hundred Fifty Seven Pesos (P208,157.00) computed as follows:

Separation pay (P7,715/mo. x 21 years / 2)

=

P81,007.00

(Limited) Backwages for 10 mons.

=

77,150.00

Damages (actual and moral)

=

50,000.00

P 208,157.00

=====

SO ORDERED."

(pp. 38-39 of Rollo in G.R. 87673)

Both parties appealed to the NLRC which rendered the now questioned decision sustaining the Labor Arbiter but deleted the award of actual and moral damages, the decretal portion of which reads:

"WHEREFORE, in view of the foregoing, the Decision dated June 30, 1988 is hereby AFFIRMED excepting the award of actual and moral damages.

SO ORDERED."

(p. 52 of Rollo in G.R. No. 87673)

Both parties filed a motion for reconsideration which was denied in a resolution dated March 8, 1989 which reads:

"After due consideration of Complainant's and Respondent's Motions for Reconsideration dated February 17, 1989 and February 27, 1989 respectively, this Commission (Fifth Division) resolved to deny the same for lack of merit.

No further motion for reconsideration shall be entertained." (p. 53 of Rollo, in G.R. 87673)

Milagros I. Dolores received the March 8, 1989 Resolution of the NLRC on March 31, 1989 and filed the petition which was docketed as G.R. No. 87673. On the other hand, SMC received the resolution on April 18, 1989 and likewise filed a petition for review which was docketed as G.R. No. 88088. As aforementioned, this Court, on June 5, 1989, resolved to consolidate the petitions (p. 83 of Rollo in G.R. No. 87673).

On July 31, 1989, the Second Division of this Court resolved to dismiss both petitions for failure to sufficiently show that the respondent NLRC committed grave abuse of discretion in rendering the questioned judgment (p. 99 of Rollo in G.R. No. 87673; 179 of Rollo in G.R. No. 88088).

Both Milagros I. Dolores and SMC filed a motion for reconsideration of the July 31, 1989 resolution of this Court. On October 9, 1989, this Court granted the motions, reinstated both petitions and required the parties to file their consolidated replies (p. 150 of Rollo in G.R. 87673; p. 180 of Rollo in G.R. No. 88088).

The petitions were given due course.

The issue before this Court is whether or not public respondent NLRC erred in finding the dismissal of Dolores to be without basis, in awarding separation pay, in lieu of reinstatement, limited backwages and in deleting the award of damages in favor of Dolores.

The following is the Labor Arbiter Atty. Pacita G. del Rosario's study and evaluation of this case:

At this point, a deep analysis and consideration of the factors surrounding the complainant's termination is in order. We are cognizant of the fact that when complainant filed her application for leave, it was for the purpose of pursuing her studies in the French language - a study that would take two (2) months, thus necessitating an equivalent period of leave; it was a laudable purpose, so to speak; a purpose that was beneficial to the respondent company too, for unrefuted is complainant's claim that her knowledge of the French language came in quite handy in her work as Head, Technical Information Corporate Research & Development and the respondent company has saved some, as it was spared from paying for translation services.

Unrefuted likewise were the averments of the complainant: (a) that this was her first leave after four (4) years and as per Personnel Policies and Procedure (which has not been superseded nor modified) she was entitled for a three (3)-month leave if it was for a "study" purpose; and (b) that she trained a technical information researcher for four (4) months to take over her technical duties while she was on leave, an action apparently made, to lay the ground work for her leave. Likewise is the complainant's allegation that after filing her Motion for Reconsideration of the approved one-month leave, she failed to get any answer/result on the same, so, went ahead and left for a two-month study. Apparently, complainant presumed in good faith, that since there was no direct refusal from her immediate superior as regards her Motion for Reconsideration, (although respondent claims that she received the final refusal annotated on top of her Motion for Reconsideration) she left the country. Then complainant returned and still reported for work the very next day, only to be furnished with the Memorandum of Termination. It should be noted that the said Memorandum is dated November 25, 1986 and her termination effective December 1, 1986. The haste with which her dismissal was effected cannot be overlooked not to speak of the untold miseries and shock it must have caused herein complainant.

All these factors, taken in their proper context and buttressed by the denial of the employee's privilege to a maximum three-month leave as provided for in the Personnel Policies and Procedures Manual, negates the existence of a sufficient, justifiable cause for dismissal.

However, the only discordant factor of note to an otherwise clear picture of an arbitrary termination of service is the fact that herein complainant is a top managerial official of the company, one of the several employees on whose shoulders rests the burden of running efficiently and smoothly the respondent's business. She was the Head of the Technical Information, Corporate Research & Development. Like any other top managerial employee, she is tasked with a greater sense of responsibility and concern...a higher degree of dedication to the job unlike other ordinary employees. In this aspect, complainant was wanting. Even assuming that respondent did not furnish complainant with a copy of the annotation denial on top of her Motion for Reconsideration as attested by the lack of her signature thereon, she should not have presumed this as acquiescence to her said Motion. It behooves upon her, as a top executive, to find out the final action on her Motion for Reconsideration and clear with her immediate superior any obstacle, immediate or otherwise, which may possibly occur during her projected two-month leave. Training for four (4) months of a replacement is not a sufficient measure. Complainant knew beforehand that she'll be gone for two months and only a month's leave was approved by her immediate superior, the least that could be done was to check with her superior (who works in the same department with her) before leaving (Rollo, G.R. No. 87673, pp. 34-36).

Significantly, from the above findings of the Labor Arbiter herself, it was established that petitioner employee is one of the top ranking officials of the company, tasked with greater responsibility and a higher degree of dedication to the job unlike the other ordinary employees to whom the first group of factors would perhaps apply. Prudence dictates that she should not have taken for granted that her motion for reconsideration would be favorably acted upon. She took chances and now she has nobody to blame but herself for the consequences.

By and large, it appears that this is not a simple case of contributory negligence on the part of petitioner Dolores but an infraction of the rules and regulations for which as a top managerial employee she should be the first to respect. Instead she blatantly disregarded the rules, absented herself without permission from her superior, which is a valid ground for the imposition of disciplinary action including if warranted the extreme penalty of dismissal.

Employers, generally, are allowed a wider latitude of discretion in terminating the employment of managerial personnel which by their nature requires the employer's trust and confidence in a greater degree than in the ordinary rank and file employees. Considering the fact that she was holding a managerial position, her refusal to abide by the lawful orders of her employers would lead to erosion of trust and confidence reposed on her. Loss of confidence is a valid ground for dismissing an employee and proof beyond reasonable doubt is not required. All that is needed is for the employer to establish a sufficient basis for the dismissal of an employee. (Cruz v. Medina, 177 SCRA 565-566 [1989])

Furthermore, when an employee accepts a promotion to a managerial position or to an office requiring full trust and confidence she gives up some of the rigid guarantees available to an ordinary worker. Infraction which if committed by others would be overlooked or condoned or penalties mitigated may be visited with more serious disciplinary action (Metro Drug Corporation vs. NLRC, 143 SCRA 132 (July 28, 1986)).

Dolores' plea that under company rules, she is entitled to three months leave without pay is likewise unavailing as such privilege is not absolute but discretionary. In her case the limitation to one month leave was based on the anticipated heavy workload which is unquestionably a valid ground.

There is no question that petitioner Dolores is guilty of breach of trust and violation of company rules, the penalty of which ranges from reprimand to dismissal, depending on the gravity of the offense. (Manila Electric Co. v. NLRC, 175 SCRA 277 [1989])

Nonetheless, considering petitioner Dolores' 21 years of service with San Miguel Corp. and it appearing that this is her first offense which incidentally was beneficial to the employer for unrefuted is her claim that her study of the French language spared the company from paying for translation services, it appears that the penalty of dismissal would be too harsh under the circumstances. This Court has held time and again, in a number of decisions, that notwithstanding the existence of a valid cause for dismissal, such as breach of trust by an employee, nevertheless dismissal should not be imposed as it is too severe a penalty if the latter has been employed for a considerable length of time in the service of her employer (*Manila Electric Co. v. NLRC*, supra). More equitably therefore, she should be granted reinstatement but without damages, considering the good faith of the employer in dismissing the employee; (*ibid.*) otherwise, it would have the effect of rewarding rather than punishing the erring employee for her offense.

Neither can San Miguel Corp. be liable for actual and moral damages in the absence of proof that there was malice or bad faith on the part of the former in terminating the services of the latter (*Suaris v. BPI*, 176 SCRA 689 [1989]).

As earlier discussed, several telex messages and letters were sent to her addresses both here in the Philippines and abroad as early as October 21, 1986 warning her that her permission for leave had expired. It is indeed difficult to believe that she did not receive any of these notices. Be that as it may, it will be recalled that she left for France thinking that permission had been granted for two months.

PREMISES CONSIDERED, the assailed decision of the National Labor Commission is MODIFIED by allowing reinstatement with backwages for two years but without damages.

SO ORDERED.

Melencio-Herrera, (Chairman), Regalado, and Nocon, JJ., concur.
Padilla, J., no part.

* Rendered by Presiding Commissioner Lourdes C. Javier and Commissioner Danilo S. Lorredo.

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