

HI CEMENT CORPORATION, PETITIONER, VS. THE NATIONAL LABOR RELATIONS COMMISSION AND ULYSSES C. CUARTE, RESPONDENTS.

G.R. No. 90311. June 09, 1992

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

Petitioner Hi Cement Corporation (Hi Cement, for short) seeks by this petition for certiorari to annul and set aside the resolution dated June 8, 1989 of the National Labor Relations Commission (NLRC, for short) in connection with NLRC-NCR Case No. 6-4237-82 entitled, "Ulysses C. Cuarte vs. Hi Cement Corporation," affirming with modification the Labor Arbiter's decision dated August 2, 1984, which ordered Hi Cement to reinstate the complainant, now respondent, Ulysses C. Cuarte (Cuarte, for short) with backwages.

On July 25, 1981, Dr. Cuarte was hired by Hi Cement as Company Physician with a basic salary of P2,387 per month and total monthly allowance of P1,502.82 as of the date of the termination of his services on May 19, 1982.

On April 17, 1982, a strike was declared by the labor union at the Hi Cement plant in Norzagaray, Bulacan. Because a picketline had formed at the gate of the plant, Dr. Cuarte, on April 20, 1982, sent a note (Exhibit D) to his assistant nurse to bring out his diagnostic kit, surgical instruments and PIMS from the company premises.

Engineer Oscar P. Tecson, the overall-in-charge of administrative matters in the Hi Cement plant for the duration of the strike, saw the note but he refused to give Cuarte's medical instruments to him. He construed Cuarte's request as loss of interest in working for the company. In a letter dated April 23, 1982 (Exh. E), Engr. Tecson directed Dr. Cuarte to submit a letter of resignation within 72 hours.

On April 28, 1982, Dr. Cuarte was able to retrieve his medical bag when he was allowed to enter the company premises, escorted by the company's security guards.

On May 5, 1982, a return-to-work order was issued by the Ministry of Labor, Engr. Jose B. Yuson, Hi Cement's Assistant Vice President for Administration, terminated Dr. Cuarte's employment effective May 16, 1982 (Exhibit E).

On June 8, 1982, Dr. Cuarte filed a complaint for illegal dismissal against Hi Cement.

In a decision dated August 2, 1984, Labor Arbiter Manuel B. Lorenzo held that Dr. Cuarte was denied due process, hence, his dismissal was illegal. The Labor Arbiter ordered: (1) Dr. Cuarte's reinstatement without loss of seniority rights; (2) payment to him of full backwages from the effective date of his termination on May 16, 1982, up to the date of his actual reinstatement; and (3) payment of P7,100.00 as attorney's fees plus costs.

Hi Cement appealed to the NLRC.

On August 19, 1988, the Second Division of the NLRC dismissed the appeal for being late. Hi Cement moved for a reconsideration of the resolution.

In a decision dated June 8, 1989, the NLRC reinstated the appeal, but, after a review of the Labor Arbiter's decision, it affirmed the same "with the modification that the amount of backwages is limited to one (1) year without qualification and deduction based on his last salary" (p. 31, Rollo).

On August 18, 1989, Cuarte filed a Motion for Execution.

Hi Cement filed a petition for certiorari in this Court contending that the NLRC gravely abused its discretion in affirming the decision of the Labor Arbiter because:

"A. The law does not require an employer to prove beyond reasonable doubt the ground upon which to terminate the services of its managerial employee for loss of trust and confidence;

"B. The reinstatement of private respondent and the award of 'backwages' in his favor are contrary to the facts and evidence on record, the law and settled jurisprudence on the matter;

"C. There is absolutely no factual or legal basis for the award of attorney's fees favor of private respondent." (p. 8, Rollo.)

Hi Cement alleged that Dr. Cuarte's refusal to comply with its lawful order to render medical services to his co-employees trapped inside the Company premises during the strike constituted gross insubordination causing the company to lose its trust and confidence in him and justifying the termination of his employment.

The petition has no merit. The Labor Arbiter and the NLRC correctly found that there was no basis for Hi Cement's alleged loss of confidence in Dr. Cuarte. As the Solicitor General pointed out in his comments on the petition:

"x x x Petitioner's allegation of insubordination on the part of the private respondent is based on the latter's alleged refusal to report for work after having been ordered to do so by Engr. Oscar P. Tecson, overall-in-charge of administrative matters during their telephone conversation on April 20, 1982. But this alleged telephone instruction is belied by Engr. Oscar P. Tecson's own letter to the private respondent 3 days later (Exhibit 'E') which does not make any reference to any previous telephone conversation as hereunder quoted in full:

"This has reference to your handwritten note dated 21 April 1982, we received at the Guesthouse thru the Detachment Commander.

'It appears that you are no longer interested to work with the company anymore.

'In view of your failure to report and perform your duties and responsibilities as such, during this time of extreme emergency, you are hereby requested to file your resignation within seventy-two hours from receipt hereof, to give us enough time to look for your replacement in order to safeguard the health and medical needs/requirements of our present personnel at plantsite [sic].

'Failure on your part to act accordingly within the period given shall constrain us, much to our regret, to terminate your services, for cause.

"As Engr. Tecson admits in the very first paragraph of his letter, his 'request' to private respondent to file his resignation was prompted solely by the latter's handwritten note dated 'April 21, 1982'. (Note Exhibit 'D' actually bears the date '20 April 1982'). It is strange that the letter would fail to mention the private respondent's alleged refusal to comply with order to report for work allegedly given by Engr. Tecson himself over the phone on April 20, 1982 or 3 days before said letter. Since the letter would have clearly proved private respondent's insubordination, which is by itself a strong ground for dismissal and or basis for loss of trust and confidence, Engr. Tecson would not have failed to mention private respondent's failure to respond to such order. This only proves that no such order was given by Engr. Tecson on April 20, 1982. Hence, there could

not be any insubordination.

"The same is true with petitioner's claim that on April 20, 1982, the private respondent offered to resign. An offer of resignation on the part of private respondent would have simplified matters for the petitioner. All it had to do was request confirmation of the private respondent's intention to resign and then accept it. The April 23, 1982 letter is completely silent about any previous offer to resign.

"Petitioner also claims that private respondent refused to obey the order of Engr. Jose Yuson, Assistant Vice-President for Operations given on April 23, 1982, to report for work and that the private respondent reiterated his offer to resign. This allegation suffers the same flaws just discussed. Engr. Yuson's letter of termination dated May 19, 1982 on the attributed petitioner's loss of trust and confidence on private respondent's failure to report for work during the period of the strike and his attempt to retrieve his medical kit (first paragraph). There is no reference by Engr. Yuson to any insubordination by the private respondent with respect to his alleged April 23 letter.

"The fact that the April 23, 1982 letter relied solely on private respondent's letter requesting the release of his medical kit belies the allegations that there was insubordination or an offer to resign.

"The letter of termination does not also mention private respondent's alleged offer to resign. If true, there is no better proof of private respondent's lack of desire to work for the petitioner than his offer to resign. Why both Engr. Tecson and Engr. Yuson avoided reference to the same cannot be reasonably explained. The allegations of insubordination and offer to resign were merely fabrications to justify the dismissal." (pp. 116-119, Rollo.)

On the issue of due process, it is undisputed that Dr. Cuarte was not formally charged nor investigated before he was dismissed. No hearing was conducted as required by the rules. No charges were formally preferred against him nor was he given a chance to defend himself. He was simply and summarily served a notice of termination unmindful of his right to due process and security of tenure.

We ruled in "Board of Directors, PNB vs. CA," 2 SCRA 561 - "(m)ere interrogations or inquiries conducted primarily for the purpose of eliciting facts or information, cannot take the place of an investigation and due hearing, wherein the x x x erring employee is given the opportunity to defend himself against certain specified charges."

Since there was no valid termination of his service, Dr. Cuarte is entitled to be reinstated without loss of his seniority rights and with backwages which the NLRC limited to a period of one (1) year and which Dr. Cuarte, signifying his conformity with the award, sought to be executed.

WHEREFORE, the petition is DISMISSED for lack of merit. The questioned NLRC resolution is affirmed in toto. Costs against the petitioner.

SO ORDERED.

Cruz, (Chairman), Medialdea, and Bellosillo, JJ., concur.

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