

CONTINENTAL ARRASTRE AND STEVEDORING CO., INC. (CASCO), PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND EDGARDO MALIZA, RESPONDENTS.

G.R. No. 91644. October 18, 1990

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

The propriety of the dismissal of private respondent is the center of the controversy in this petition.

Private respondent was employed by petitioner as a head vessel checker. On April 19, 1988, petitioner sent a memorandum to private respondent informing him of the termination of his services effective April 30, 1988 for allegedly causing a work stoppage on the night of April 8, 1988 on M/V Central Visayas which petitioner was then servicing. The memorandum reads as follows:

"April 19, 1988

TO : EDGARDO N. MALIZA

C A S C O

Phase II, Port of

Cagayan de Oro

FROM : FLORENTINO G. DUMLAO, JR.

General Manager

SUBJECT : NOTICE OF TERMINATION WITH PREVENTIVE SUSPENSION

X -----
----- X

- 1) That on or about 2031 hrs. April 1988 while the company was working on M/V 'Central Visayas' which was at the time berthed at Phase II, there was a stoppage of work by stevedores;
- 2) That on said time and date, you ordered the stevedores working on the vessel to stop working but when they refused, you ordered the winchman and forklift operators to stop working, causing a stoppage of work on board the vessel;
- 3) These above facts are evidenced by the affidavit of Mr. Narciso C. Pareja, the Joint Affidavits of Capataz Alfredo Jote and workgang members Melchor Arnaiz, Carlito Ramas, Jr., Warlito Adante, Arturo Jael and Arthur Sabellena and the Joint Affidavits of Jimmy Relox and Eduardo Mabale, x x x;
- 4) The above-mentioned act constitutes serious misconduct prejudicial to the interest of the company and taken together with your past offenses, clearly indicate(s) your unfitness to continue with the service of the

Company;

5) In view of the above, your services with the Company are terminated as of the close of business day of April 30, 1988. In order to prevent you from further committing the acts adverted to above, you are likewise preventively suspended effective April 20, 1988 until April 30, 1988 when the termination shall take effect.

(SGD.) FLORENTINO G. DURLAO, JR.

General Manager"[1]

On April 25, 1988, private respondent submitted to petitioner his written answer denying the alleged stoppage of work imputed to him as follows:

"In answer to your Notice of Termination with Preventive Suspension, I would like to inform you that while it is true that undersigned was present in the operation area in the evening of April 8, 1988 as Lead V/Checker to take the statement of facts (even though I was not included in the time-sheet through your memo No. FGD-24/88), it is not true that there was a stoppage of work as embodied in your said notice. What had happen only was that Messrs. Miguel Labiano, Rutherford Besario, Fresco S. Lawan, Jr. and myself, all OLDWALU-TUCP Officers, went to see Jimmy Relox, CASCO's night duty officer to negotiate whether or not, CASCO can pay our salaries the following day because it is already more than three (3) weeks time wherein workers did not receive their salaries. In fact no order or orders has been received by the stevedores to stop the loading operations as can be gleaned in a foreman's report submitted to your office, duly confirmed by the ship's Chiefmate. However, to tell you the truth, we have agreed to undergo a 'Protest' the following day, should the company will not pay our salaries (sic). Good that early (sic) in the morning of April 9, 1988, the company was able to pay the one (1) week out of the three (3) weeks unpaid salaries. x x x"[2]

Nevertheless, petitioner was not satisfied with said explanation so private respondent was accordingly dismissed.

On May 5, 1988, private respondent filed a complaint with the Regional Arbitration Branch of the National Labor Relations Commission (NLRC) at Cagayan de Oro City against petitioner for illegal dismissal and for reinstatement with full backwages, among others.

On July 28, 1988, Labor Arbiter Benjamin E. Pelaez, based on the position papers of the parties, rendered a decision finding the termination of the services of private respondent to be illegal and ordered petitioner to reinstate private respondent to his former position and to pay him backwages from the time his employment was terminated (April 30, 1988) to the time he is actually reinstated.

Petitioner appealed the decision to the respondent NLRC. In a resolution dated June 22, 1989, the appeal was dismissed for lack of merit. A motion for reconsideration thereof filed by petitioner was denied by the NLRC on September 29, 1989.

Hence, this special civil action for certiorari, which was erroneously denominated as a petition for review, raising four issues, the main thrust of which is that the dismissal of private respondent was based on a just cause.

The petition is devoid of merit. The issues raised are essentially factual and the too well-known rule is that the findings of facts of administrative agencies are generally not disturbed on appeal unless there are facts and circumstances which may have been overlooked and which may affect the result of the case. In the present case, petitioner failed to show a cogent reason why the Court should consider this case an exception to the rule.

The public respondent found the key issue to be whether or not there was a stoppage of work on the evening when private respondent allegedly instigated the same. The records clearly show that there was none.[3] Hence, the logical conclusion arrived at by public respondent is that the claim of petitioner to the effect that private respondent instigated the stoppage of work is without factual basis. Even if the several witnesses for the

petitioner, who are its employees, attest to the fact that private respondent tried to instigate them to stop or desist from working for petitioner, the explanation given by private respondent is more credible in that on that evening they only went to see the night duty officer to make sure that their delayed salary can be paid the next day otherwise they may stage a protest. It appears that the following day the salaries sought were paid by petitioner.

Petitioner also calls attention to the fact that private respondent had committed other infractions in the past as follows:

- "1. He tore down the Checker's Evaluation Report posted on the Bulletin Board.
2. He made it appear that he worked as a substitute for one Evan Cababaras when in fact he is absent.
3. Without authority as a vessel checker, he issued gate passes for the release of cargoes from the Company's custody.
4. He collected without authority from a certain Orlando Odiongan, passenger, portorage fee when the Company is not engaged in portorage and has no permit to do so.
5. He challenged to a fight and slapped a fellow worker, one Romeo Saldon.
6. Without being authorized to do so, he collected the amount of P1,200.00 and disbursed the same to fellow employees."[4]

However, for the said alleged various offenses private respondent had appropriately been penalized by a suspension of fifteen (15) days in a case filed also before the NLRC.[5] It can no longer be considered in determining the responsibility of private respondent in this subsequent event.

Moreover, private respondent manifested that petitioner had reinstated him to his employment thus rendering the petition moot. Petitioner, however, asks that the petition should nevertheless be resolved to determine the rights of the parties.

Hence, this decision.

WHEREFORE, the petition is DISMISSED for lack of merit. No pronouncement as to costs.

SO ORDERED.

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

[1] Annex I to Petition; page 50, Rollo.

[2] Page 124, Rollo.

[3] Page 36, Rollo.

[4] Pages 136-137, Rollo.

[5] RAB 10-02-00114-88, entitled *Edgardo N. Maliza vs. Continental Arrastre and Stevedoring Co., Inc.*

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