

EDUARDO PATNA-AN, PETITIONER, VS. THIRD DIVISION, NATIONAL LABOR RELATIONS COMMISSION AND LEPANTO CONSOLIDATED MINING COMPANY, RESPONDENTS.

G.R. No. 92878, March 06, 1992

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for certiorari seeking reversal of the decision of public respondent National Labor Relations Commission dated November 2, 1989, in NLRC Case No. RAB I-0016-86, entitled "Eduardo Patna-an, Complainant-Appellee v. Lepanto Consolidated Mining Company, Respondent-Appellant," which set aside the decision of the Executive Labor Arbiter dated November 25, 1988; and its resolution dated February 2, 1990, which denied the motion for reconsideration.

The antecedent facts are, as follows:

Petitioner Eduardo Patna-an has been employed with private respondent Lepanto Consolidated Mining Company as lead miner since September 13, 1976. On January 21, 1986, he filed a complaint for illegal dismissal against respondent company before the Executive Labor Arbiter. He alleged therein that on May 26, 1984, while he was going down the manway at 900 Level of respondent company's underground mines located in Lepanto, Mankayan, Benguet, its security guards stopped him. He was subjected to a body search but nothing was found thereon. One of the security guards, Razon, who was then holding something wrapped in cellophane, confronted him with the accusation that the object was taken from him. When he denied the accusation, he was brought to the investigation office. At the office, the investigators were unable to extract a confession from him. He claimed that the charge against him was fabricated by the guards in order to collect cash rewards or to receive a commendation or promotion from respondent company. Likewise, he asserted that his dismissal was effected without due process.

Mario Acay, another worker, claimed in his affidavit that nothing was found on the body of petitioner Patna-an by the security guards. He added that he, too, while on the way to the Tubo shaft, was frisked by members of the mine patrol but he was allowed to proceed when nothing was found on him.

Respondent company refuted the version of petitioner Patna-an. According to it, on May 26, 1984, at about 9:00 in the evening, security guards Ernesto Fagela, Bienvenido Lasam, Jr. and Constancio Razon, Jr., were on patrol at 145 GZ HZ, 900 Level, a highly restricted area. At about 10:00, while the guards had their lights switched off and were observing the area, they noticed a worker, later identified as petitioner Patna-an, descending the manway from the stope of 145 GZ HZ. Thereupon, the guards switched their lights on. They saw an object tucked in petitioner Patna-an's miner's belt. He tried to run away but the guards held him. Upon inspection, Razon found out that the objects, which were wrapped in cellophane, were ground and pulverized stones believed to be highgrade. Petitioner Patna-an was brought to the Integrated National Police Headquarters for investigation. As a result, a criminal complaint for attempted highgrading was filed against him before the Municipal Trial Court of

Mankayan, Benguet, docketed as Criminal Case No. 2423 (R-11). He was placed under preventive suspension for thirty days. A notice of termination of employment was served on him, which required that he answer the complaint within three days from receipt thereof. He did not submit an answer. He was dismissed from employment not only for highgrading but for having been found in an area which was not his assigned workplace and restricted to employees like him. All these constituted grounds for termination of his employment, being violations of rules promulgated by management.

In respondent company's position paper, it enumerated the offenses previously committed by petitioner Patna-an (pp. 25-26, Rollo):

"a. On March 29 up to April 14, 1977, complainant was preventively suspended for 17 days without pay for violation of company rules and regulations, Rule 1, par h, dishonesty, theft and/or robbery after he was apprehended while in possession of highgrade ores at 1030 Level portal at about 3:05 in the afternoon of March 28, 1977; that he was supposed to have been dismissed from the employ of the respondent had it not been for his pleas that he be given one last chance;

"b. On November 21, 1977, complainant was warned far his consistent irregularity in his attendance;

"c. On January 22, 1990, complainant was warned for being absent without official leave;

"d. On September 3, 1981, complainant was again warned for being absent without official leave committed on August 28, 1981;

"e. From November 26 up to December 9, 1981, complainant was suspended for 15 days without pay for theft of 15 pieces of lumber from langan stock pile comitted (sic) on October 18, 1981; that complainant was not dismissed because of his promise not to violate any company (or) regulation again;

"f. On May 29, 1982, complainant was again warned for being absent without official leave committed on May 21, 1982;

"g. On November 9, 1982, complaint was again warned for being absent without official leave committed on November 3, 1982. (At pp. 1-2)."

The Executive Labor Arbiter was "convinced of the truthfulness of the narration of the events which transpired on May 26, 1984, as presented by the witnesses of the respondent" (p. 26, Rollo). She explained that (ibid):

"There is no reason to disbelieve the story of security guards Fagela, Lasam and Razon that they caught the complainant in a restricted area. Although the complainant would want the undersigned to accept his version that the guards made up the story in order to collect (on) cash rewards or be promoted or commended, the attempt fails because he did not present any evidence to prove that the guards did receive rewards or were commended or promoted. His bare denial, which is only to be expected from one who would lose his job if found guilty of any misdemeanor, cannot be accepted in the face of the positive statement of the guards."

Nevertheless, on November 25, 1988, the Executive Labor Arbiter held respondent company guilty of illegal dismissal. The dispositive portion of its decision, reads (p. 29, Rollo):

"WHEREFORE, premises considered, judgment is hereby rendered:

"1. Declaring the respondent guilty of illegal dismissal; and

"2. Ordering the respondent:

"a. To reinstate the complainant to his former position, without loss of seniority rights;

"b. To pay the complainant three (3) years backwages, without qualification or deduction, to be computed on the

basis of the salary he last received at the time of his dismissal; and

“c. To pay counsel for the complainant attorney's fees of ten percent of the amount of wages recovered.

"SO ORDERED."

She expressed the opinion that (pp. 27-28, Rollo):

"x x x, the allegation of the guards that they believed that the ores confiscated from the complainant were highgrade cannot be acknowledged as evidence of the fact in the absence of a certification from an expert that the same were found to be highgrade. The guards are not competent witnesses to attest to the same. Their suspicion that the pieces of ore the complainant hid in his belt were highgrade cannot be the basis of a moral conviction that the latter committed the offense of highgrading.

"Highgrading, or theft of gold, is committed when a person removes, collects or gathers gold-bearing ores or rocks in place or extracts or removes the gold from such ores or rocks (PD 581). Complainant cannot be adjudged to have committed the offense of highgrading absent any evidence that the rocks he tried to spirit out from the underground were gold-bearing ores.

"Although the respondent would assert that the fact that the complainant was found in a restricted area was reason enough to dismiss him, the undersigned believes that such offense could only have warranted his suspension, but not his dismissal because it had not been shown that he was there engaged in highgrading. Suspension of thirty days was enough to send a message strong and clear to the complainant."

Respondent company filed an appeal before public respondent National Labor Relations Commission. On November 2, 1989, respondent NLRC set aside the decision of the Executive Labor Arbiter and dismissed the complaint filed by petitioner Patna-an (pp. 30-34, Rollo. In support thereof, it said (p. 33, Rollo):

"It appears incomprehensible why the Labor Arbiter would make a complete turnaround and declare complainant illegally dismissed, solely on the basis of respondent's failure to present certification from an expert that the ores confiscated from complainant were highgrade. The Labor Arbiter could not and should not have missed the glaring facts: that complainant herein consummated the act of highgrading, was caught, interrogated and given opportunity to be heard and subsequently found guilty. In short, his violations of company rules and regulations and breach of the trust and confidence of his employer, were fully substantiated by evidence. Such acts should certainly have warranted a finding of dismissal for cause."

Hence, this petition.

Petitioner Patna-an imputes grave abuse of discretion on the part of respondent NLRC 1) in reversing the decision of the Executive Labor Arbiter dated November 25, 1988; and 2) in rendering its decision dated November 2, 1989 and its resolution dated February 2, 1990, which are contrary to the Constitutional provision guaranteeing security of tenure to the working man, Batas Pambansa Blg. 130 and its implementing rules and regulations and the decisions of this Court.

As regards the first issue, petitioner Patna-an maintains that before it can be said that indeed, he is guilty of highgrading, it must be established by convincing evidence that the ores which were allegedly taken from him is found to be highgrade. Respondent company failed to do so.

Respondent company contends that what is required in dismissal cases is mere presence of a basis for loss of trust and confidence. It is not really indispensable that the ores recovered from petitioner Patna-an be first assayed before he can be terminated from employment.

The Office of the Solicitor General is in conformity with petitioner Patna-an. It adds that he was dismissed from employment by respondent company on a mere suspicion that he was engaged in highgrading or theft of gold.

Respondent NLRC, in support of its questioned decision and resolution, argues that the act done by petitioner Patna-an was patently inimical to the interest of respondent company for which the latter cannot be compelled to retain the former in its employ.

We sustain the questioned decision and resolution of respondent NLRC.

The job of petitioner Patna-an as a miner, although generally described as menial, is, nevertheless, of such nature as to require a substantial amount of trust and confidence on the part of respondent company. The requirement that there be some basis or reasonable ground to believe that the employee is responsible for the misconduct is sufficiently met in the case at bar. Petitioner Patna-an's behavior rendered him unworthy of the trust and confidence demanded by his position. Considering that an employer is entitled to terminate the services of employees for just causes and that stealing and other forms of dishonesty have been held to be sufficient grounds for dismissal, as a measure of self-protection, respondent company was justified in dismissing petitioner Patna-an (*Auxilio, Jr. v. NLRC, et al.*, G.R. No. 82189, August 2, 1990, 188 SCRA 263; *Philippine Long Distance Telephone Co. v. NLRC*, G.R. No. 59724, May 30, 1983, 122 SCRA 618; *Commercial Motors Corporation v. Commissioners, et al.*, G.R. No. 74762, December 10, 1990, 192 SCRA 191; *Anscor Transport and Terminals, Inc. v. NLRC, et al.*, G.R. No. 85894, September 28, 1990, 190 SCRA 147). As a rule, this Court leans over backwards to help workers and employees continue with their employment or to mitigate the penalties imposed on them, however, acts of dishonesty are a different matter (*Firestone Tire & Rubber Co. of the Phil. v. Lariosa, et al.*, G.R. No. 70479, February 27, 1987, 148 SCRA 187).

The argument advanced by petitioner Patna-an and the Office of the Solicitor General that "before it can be said that indeed, he is guilty of highgrading, it must be established by convincing evidence that the ores which were allegedly taken from him is found to be highgrade" (*supra*) is utterly fallacious. The employer's evidence in dismissal cases is not required to be of such degree as is required in criminal cases, i.e., proof beyond reasonable doubt. Substantial evidence will suffice (see *Commercial Motors Corporation v. Commissioners, et al.*, *supra*). Thus, it is not imperative that all the elements of highgrading or theft of gold, as defined in Section 1 of Presidential Decree No. 581,* exist as prerequisite to respondent company's loss of trust and confidence on petitioner Patna-an. The established facts that he was apprehended by respondent company's security guards with ground and pulverized stones tucked in his miner's belt and that he was found in an area which was not his assigned workplace and highly restricted to employees like him reasonably generated belief by respondent company that he is guilty of highgrading.

The Office of the Solicitor General argues further that "[t]he penalty of dismissal is unconscionable considering that petitioner had been working continuously with and for Lepanto for the past eight (8) years." (p. 93, Rollo)

Perhaps, viewed by itself as an isolated incident in petitioner Patna-an's service, the misconduct that he committed does not warrant so severe a penalty as dismissal. However, his misconduct is not an isolated circumstance in his eight (8) years of employment with respondent company. Unrebutted evidence on record shows that the following offenses were committed by him previously: (1) from March 29, 1977 up to April 14, 1977, he was preventively suspended for seventeen (17) days without pay for dishonesty, theft and/or robbery after he was apprehended while in possession of highgrade ores; and (2) from November 26, 1981 up to December 9, 1981, he was suspended for fifteen (15) days without pay for theft of fifteen (15) pieces of lumber. In both instances, he was not dismissed from employment because of his promise not to violate any company regulations again. In an act of generosity, respondent company chose to give him another clean slate for the present misconduct and maintained him as a miner. Yet, he still duplicated his previous infractions, for which his services were terminated finally. There is more reason for dismissal where the acts of misconduct and willful breach of trust are repeatedly committed by an employee (*Philippine Long Distance Telephone Co. v. NLRC*, G.R. No. 59724, May 30, 1983,

122 SCRA 618; National Service Corporation v. Leogardo, Jr., G.R. No. 64296, July 20, 1984, 130 SCRA 502; Piedad v. Lanao del Norte Electric Cooperative, Inc., et al., G.R. No. 73735, August 31, 1987, 153 SCRA 500).

It is unnecessary to discuss the second issue because by not appealing the decision of the Executive Labor Arbiter, petitioner Patna-an is already bound by her finding that there was no denial of due process.

Aside from the foregoing ratiocination on the merits of this case, Our original and exclusive jurisdiction to review a decision or resolution of respondent NLRC, in a petition for certiorari under Rule 65 of the Rules of Court, does not normally include the correctness of its evaluation of the evidence, but is confined to issues of jurisdiction or grave abuse of discretion. It was thus incumbent upon petitioner Patna-an to satisfactorily establish that respondent NLRC acted capriciously and whimsically, in total disregard of evidence material to or even decisive of the controversy, in order that the extraordinary writ of certiorari will lie. However, nowhere in his petition and memorandum can We find any acceptable demonstration that respondent NLRC acted either with grave abuse of discretion or without or in excess of its jurisdiction (see Sajonas, et al. v. NLRC, et al., G.R. No. L-49286, March 15, 1990, 183 SCRA 182).

ACCORDINGLY, the petition is hereby DISMISSED. The decision of the National Labor Relations Commission dated November 2, 1989 and its resolution dated February 2, 1990 are AFFIRMED.

SO ORDERED.

Narvasa, C.J., (Chairman), Cruz, and Grino-Aquino, JJ., concur.

* Section 1. Any person who shall take gold-bearing ores or rocks from a mining claim or mining camp or shall remove, collect or gather gold-bearing ores or rocks in place or shall extract or remove the gold from such ores or rocks, or shall prepare and treat such ores or rocks to recover or extract the gold contents thereof, without the consent of the operator of the mining claim, shall be guilty of "highgrading" or theft of gold x x x.

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