

**DIOSDADO DE VERA AND UNITED CMC TEXTILE WORKERS UNION,
PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION,
CENTRAL TEXTILE MILLS, INC., AND/OR AGUSTIN CABATINGAN,
RESPONDENTS.**

G.R. No. 93212. November 22, 1990

Ponente: CRUZ, J.

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CRUZ, J.:

Diosdado de Vera was employed as a mechanic in the weaving department of the Central Textile Mills, the herein private respondent. He claims he was active in union activities. In the course of his employment, he had been administered disciplinary sanctions for various offenses, including not wearing the ID tag in the company premises, leaving his workplace without permission, habitual tardiness, reporting for work under the influence of liquor, and damaging property in the performance of his duties. The last two offenses were each punished with 5 days suspension and the others with written or oral warnings.

On October 2, 1984, the petitioner had a row with Jesus Ocampo, a fellow worker, whom he hit in the head with a stick. The protagonists were soon pacified. Ocampo saw fit not to file any charge against De Vera with the company or the police. Nevertheless, the private respondent, upon learning of the incident, called for its investigation by a fact-finding committee. This was composed of a company representative as chairman and two union representatives.

In the investigation, De Vera claimed he had on the date in question asked Ocampo for payment of a P100.00 loan he had extended him, but the latter resented the dunning and swore at him. That provoked his attack on Ocampo. Ocampo himself never appeared before the investigators. Two months later, the committee chairman, allegedly without notice to the two union members, recommended De Vera's dismissal for violation of company rules. Acting on this recommendation, the private respondent dismissed the petitioner on December 10, 1984.

On October 15, 1985, the president of the CMC Textile Workers Union filed on its behalf and of the petitioner a complaint for illegal dismissal against the Central Textile Mills, Inc. After hearing, the complaint was dismissed by Labor Arbiter Emerson C. Tumanon in a decision dated May 22, 1989.[1] On appeal, the decision was affirmed in toto by the NLRC in its resolution dated February 28, 1990.[2] The petitioner then came to this Court alleging grave abuse of discretion on the part of the public respondent.

The findings of fact of the NLRC are conclusive on this Court in the absence of a showing that they were arrived at arbitrarily. The petitioner has failed to show such arbitrariness. We therefore accept, on the basis of the evidence of record, including the petitioner's own admission, that he had indeed committed a violation of company rules by hitting Ocampo on the head.

Assuming the provocation, we nevertheless agree that the attack was not justified. It is not correct to say that the company was not itself prejudiced, for the peace in its premises was disturbed and the discipline of the personnel

affected. The private respondent could not close its eyes to the incident at the risk of further disregard of its rules, which it had a right to enforce. The fact that Ocampo chose not to prefer charges did not prevent the company from acting *motu proprio* to investigate the incident.

We also sustain the finding that the private respondent was not guilty of any unfair labor practice, no evidence having been submitted to support the charge.

Going deeper into the record, however, we find that the penalty of dismissal was not commensurate with the offense, considering the other circumstances of this case. We note, first of all, that the petitioner had been working with the respondent company for fourteen years and was apparently doing well except for the earlier-mentioned offenses that had already been sufficiently punished. The differences between De Vera and Ocampo have long since been patched up and the two have decided to forget the incident. To all appearances, the discipline of the company has not deteriorated as a result of the quarrel between the two employees.

Given all these facts, we feel that a lighter penalty than that meted out to De Vera would have been more just, if not humane.

Nevertheless, since relations between the parties have already been strained, we feel it is not practical anymore to reinstate the petitioner, who is no longer welcome in the company. We shall therefore sustain the penalty imposed, but with modification. The modification is that the petitioner shall be granted separation pay at the rate of one month salary for every year of service, taking into account the nature and degree of the offense he has committed, which is neither serious nor depraved. This ruling is conformable to the case of *PLDT v. NLRC*,^[3] where the Court said:

There should be no question that where it comes to such valid but not iniquitous causes of failure to comply with work standards, the grant of separation pay to the dismissed employee may be both just and compassionate, particularly if he has worked for some time with the company. For example, a subordinate who has irreconcilable policy or personal differences with his employer may be validly dismissed for demonstrated loss of confidence, which is an allowable ground. A working mother who has also to take care of her child may also be removed because of her poor attendance, this being another authorized ground. It is not the employee's fault if he does not have the necessary aptitude for his work but on the other hand the company cannot be required to maintain him just the same at the expense of the efficiency of its operations. He too may be validly replaced. Under these and similar circumstances, however, the award to the employee of separation pay would be sustainable under the social justice policy even if the separation is for cause.

But where the cause of the separation is more serious than mere inefficiency, the generosity of the law must be more discerning. There is no doubt it is compassionate to give separation pay to a salesman if he is dismissed for his inability to fill his quota but surely he does not deserve such generosity if his offense is misappropriation of the receipts of his sales. This is no longer mere incompetence but clear dishonesty. A security guard found sleeping on the job is doubtless subject to dismissal but may be allowed separation pay since his conduct, while inept, is not depraved. But if he was in fact not really sleeping but sleeping with a prostitute during his tour of duty and in the company premises, the situation is changed completely. This is not only inefficiency but immorality and the grant of separation pay would be entirely unjustified. (Underscoring supplied).

The social justice policy mandates a compassionate attitude toward the working class in its relations with management. While in calling for the protection of labor, the Constitution does not condone wrongdoing by the employee, it nevertheless urges a moderation of the sanctions that may be applied to him in the light of the many disadvantages that weigh heavily on him like an albatross hanging from his neck. Management must look upon the working class with sympathy, remembering that they are equal partners joined in a common venture whose

success should redound to their mutual benefit. They should regard each other in a spirit of amity and trust, not with closed hands but with open arms, that they may endeavor better together.

WHEREFORE, the petition is partly GRANTED, and the private respondent is DIRECTED to pay separation pay to the petitioner as above indicated. It is so ordered.

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

[1] Rollo, p. 18-21.

[2] Ibid., pp. 11-17.

[3] 164 SCRA 671.

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