

PUERTO AZUL BEACH HOTEL AND ENGINEER DOMINADOR CACULITAN, PETITIONERS, VS. ARNEL M. SISAYAN AND NATIONAL LABOR RELATIONS COMMISSION, RESPONDENTS.

G.R. No. 93965. March 11, 1991

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The petitioners assail the jurisdiction of the respondent National Labor Relations Commission (NLRC) to act on their motion for reconsideration. They likewise challenge the NLRC decision affirming the labor arbiter's finding of unlawful dismissal and awarding of backwages to the private respondent.

Respondent Sisayan was employed with petitioner Puerto Azul Beach Hotel on September 2, 1982 as shift engineer. He continuously worked therein until November 12, 1987, when he reported for work but was sent home by the security officers who received a copy of a memorandum from the Personnel Department terminating his services.

On November 17, 1987, Sisayan filed a case of illegal termination against Puerto Azul Beach Hotel and his immediate superior, Chief Engineer Dominador Caculitan.

In their answer, the petitioners alleged that:

"xxx [I]n the early morning of October 29, 1987, at about 4:30, Mr. Edilberto Sibug, respondent's Public Area Supervisor, noticed that the ceiling of the ballroom foyer was leaking. As a temporary measure intended to protect the newly-installed ballroom carpet from water damage, Mr. Sibug instructed some employees to place some pails on the carpet where the leak was dripping, and reported the matter verbally to Mr. Manuel Cayabyab, the Night Duty Officer, who was then making his rounds of the premises. Upon learning about the leak, Mr. Cayabyab, together with Mr. Sibug went up into the inner part of the ceiling in order to determine the cause of the leak. Once inside the ceiling, they discovered that the big buckets which had been previously placed on the flooring of the ceiling to collect the water leak from the malfunctioning airhandling unit of the airconditioners had overflowed with water, thereby causing water to seep through the ceiling of the ballroom and leak into the ballroom carpet.

Knowing that the problem was the jurisdiction of the engineering staff, Mr. Cayabyab immediately called up the Shift Engineer on duty, complainant Arnel Sisayan, informed him about the overflowing buckets of water inside the ceiling of the ballroom, and requested him to come to the ballroom and help remedy the problem.

After Mr. Cayabyab had telephoned complainant, he left and continued his rounds of the premises of the hotel. He, however, went back at once to the ballroom in order to check on the progress of the work he thought was being undertaken by complainant as regards the leaking ceiling. He was surprised to learn that instead of personally attending to the problem, complainant had delegated the matter to Romy Suico, a utility man who did not know how to deal with the leak. At the time Mr. Cayabyab returned to the ballroom, he saw Romy Suico merely replacing the nearly-filled pails which Mr. Sibug had earlier positioned on the ballroom floor to collect the water leak from the ceiling, without doing something about the overflowing buckets of water inside

the ceiling. At this point, Mr. Cayabyab called up complainant again and strongly instructed him to come to the ballroom and personally supervise the emptying of the overflowing buckets which had been placed inside the ceiling, explaining to him that the person he sent did not know how to deal with the problem. He also called up the Steward foreman and asked him to send someone to help empty those buckets. The Steward foreman sent Reynaldo Pascasio. For his part, Mr. Sibug sent a houseman, Emmanuel Santos to render assistance.

After giving the foregoing instructions, Mr. Cayabyab accompanied a sick employee to the clinic to get some medication. However, when he went back to the ballroom foyer after sometime, he was surprised to see that the newly-installed carpet at the ballroom foyer was soaked in water and that the wallpaper and furniture were all wet. When Mr. Cayabyab investigated, he learned that complainant arrived at the ballroom foyer minutes after Mr. Cayabyab had called him by phone and seeing that Pascasio and Santos were bringing down the water from the overflowing buckets inside the ceiling pail by pail and emptying them in the sink of the Room Service Area, he gave instructions for the two to throw the water instead at one end of the ceiling flooring. The water thus thrown directly flowed from the ceiling into the ballroom foyer and so damaged the carpet and all furnishings therein.

At about the same time Mr. Cayabyab arrived at the ballroom foyer, Mr. Sibug also arrived and after learning of what happened, initiated remedial measures to prevent further water damage to the carpet and furniture. Mr. Sibug ordered his men to dry the carpet and furniture with cotton rags and to vacuum them. He then positioned several electric fans on the foyer and directed the air flow towards the carpet and furniture to dry them.

Because of the above-mentioned efforts, the damage to the carpet and furniture was minimized. However, the foyer lampshade could not be used anymore because the white shade had been badly discolored. Moreover, the carpet had lost its brand new look and had acquired a disheveled appearance.

In the meantime, Mr. Cayabyab approached complainant and asked him for an explanation. Instead of answering, complainant walked away as if nothing had happened and went into the Lobby where he casually conversed with some night clerks. Later, when the Chief Engineer required him to formally explain in writing why he should not be dismissed for his reckless and negligent act of directing the throwing of water at the end of the ceiling flooring, complainant stated in his letter, copy of which is herewith attached as Annex "B", that he thought that the end of the ceiling flooring was a gutter. (Rollo, pp. 51-55)

The petitioner added that aside from the foregoing incident, which constituted gross negligence by respondent Sisayan, the latter committed other violations of company rules and regulations, such as sleeping on duty and absenting himself without leave.

Sisayan denied the allegation that "he gave instructions for the two to throw the water instead at one end of the ceiling floor". He claimed that he instructed Pascasio and Santos to throw the water into the gutter which was at one end of the ceiling floor and that he cannot be faulted if the latter threw the water at one end of the ceiling floor because his instruction was to throw the water into the gutter. He also denied that he was verbally asked by the Chief Engineer to explain about the October 29 incident and that he committed the other alleged infractions.

After hearing, the labor arbiter ruled that the respondent was unlawfully dismissed and ordered the petitioners to reinstate him to his former position without loss of seniority rights and other privileges but without backwages.

Both parties appealed to the NLRC. The NLRC, in a resolution dated July 28, 1989, modified the labor arbiter's decision by awarding backwages to Sisayan from the time of illegal dismissal to actual reinstatement, but not to exceed three years, without deduction or qualification.

On August 16, 1989, the petitioners filed a motion for reconsideration of the NLRC resolution, praying that the award for backwages be set aside or reduced.

Respondent Sisayan filed a Reply/Opposition to Motion for Reconsideration on October 2, 1989.

The petitioners, on November 14, 1989, filed their Rejoinder to Reply/Opposition to Motion for Reconsideration. On December 21, 1989 the petitioners filed a Supplemental Manifestation in support of the Motion for Reconsideration.

On June 5, 1990 the petitioners filed a Motion to Suspend Proceedings on the ground that the three NLRC Commissioners comprising the Division to which the case has been assigned, namely: Lourdes Javier, Ireneo Bernardo and Rogelio Rayala, do not have the legal authority and power to decide on the pending motion for reconsideration because their appointments have not yet been confirmed by the Commission on Appointments.

Meanwhile however, on May 31, 1990, the NLRC issued a resolution denying the petitioners' motion for reconsideration.

The petitioners thereafter filed this petition for certiorari on July 6, 1990 raising the following issues:

- I. The division presiding Commissioner and the two other Commissioners of the third division of the respondent NLRC have acted without or in excess of jurisdiction or with grave abuse of discretion as they do not have the power, authority and jurisdiction to hear and decide cases brought before them because their appointments have not yet been confirmed by the Commission on Appointments x x x.
- II. Respondent NLRC committed a grave abuse of discretion and reversible error when it affirmed the findings of Arbiter Allen Rasul Abubakar that respondent Sisayan was not afforded the notice and due process as provided for in Batas Pambansa Blg. 130.
- III. Respondent NLRC committed grave abuse of discretion when it did not find that the acts of respondent Sisayan were sufficient to justify dismissal.
- IV. Granting without admitting that respondent Sisayan is entitled to backwages, respondent NLRC committed a serious and grave abuse of discretion when it awarded backwages from date of illegal dismissal to actual reinstatement but not to exceed three (3) years.
- V. Respondent NLRC committed a grave abuse of discretion and a reversible error when it did not order the payment of separation pay to respondent Sisayan in lieu of backwages considering that there is already a person appointed to the position of said Respondent Shift Engineer and the hotel employees do not want respondent Sisayan to be reinstated. (Rollo, pp. 10-11)

The Court issued a temporary restraining order dated July 16, 1990 enjoining the enforcement and/or carrying out of the NLRC order awarding backwages to the private respondent.

According to the petitioners, Republic Act No. 6715, which amended the Labor Code and took effect after December 2, 1988 provides that the Chairman, the Division Presiding Commissioners and other Commissioners of the NLRC shall be appointed by the President subject to the confirmation of the Commission on Appointments.

The petitioners claim that on November 18, 1989, Javier, Bernardo and Rayala, along with several others, were issued permanent appointments by President Aquino as Presiding Division Commissioner and Commissioners, respectively, of the NLRC. Since the Commission on Appointments has not yet confirmed their appointments, the petitioners contend that they cannot legally and validly act in their respective positions, and as they did not have the power, authority and jurisdiction to decide and rule on the Motion for Reconsideration in the case at bar, then the NLRC resolution dated May 31, 1990 is null and void.

To bolster their proposition, the petitioners cite the petition for prohibition entitled *Peter John Calderon v. Bartolome Carale, et al.*, G.R. No. 91636. In that case, petitioner Calderon is questioning the constitutionality and legality of the permanent appointments issued by the President to Bartolome Carale as Chairman of the NLRC and the other respondents as Commissioners including Javier, Bernardo and Rayala, and the assumption into

office of respondents without their appointments being submitted to the Commission on Appointments for confirmation. The petitioner asserts that in assuming office and discharging the functions attached thereto, without their appointments being submitted to and subsequently confirmed by the Commission on Appointments, as required by the Constitution and the Labor Code, the respondents are acting without or in excess of jurisdiction or with grave abuse of discretion.

There is indeed an identity of issues raised in the present case and in G. R. No. 91636, which is still pending resolution by the Court en banc, with respect to the alleged lack of authority of the appointed Commissioners to act as such. The Court, however, finds that it need not await the decision in G.R. No. 91636 since the authority of the NLRC Commissioners to hear and decide the case may be sustained for reasons hereinafter discussed.

Commissioners Javier, Bernardo and Rayala were appointed Commissioners of the NLRC on November 18, 1989. At that time, a decision had already been rendered but a motion for reconsideration was still pending. After the appointments of the Commissioners, the petitioners did not assail their authority to act on the motion. Instead, for over six months, they merely awaited the outcome of their motion for reconsideration. On December 21, 1989 they even filed a Supplemental Manifestation in Support of the Motion for Reconsideration before the NLRC, thereby impliedly submitting to its jurisdiction. Only after the denial of their motion for reconsideration on May 31, 1990 did the petitioners file a Motion to Suspend Proceedings on June 5, 1990 questioning the jurisdiction, power and authority of the Commissioners of the respondent NLRC to hear and decide labor cases when their appointments had not yet been confirmed by the Commission on Appointments.

The Court has consistently frowned upon the undesirable practice of a party submitting his case for decision and then accepting the judgment only if favorable, and attacking it for lack of jurisdiction when adverse. (See *Tijam v. Sibonghanoy*, 23 SCRA 29 [1968], *Pendayan v. Dans*, 6 SCRA 144 [1962]), *Young Men Labor Union Stevedores v. Court of Industrial Relations*, 13 SCRA 285 [1965]).

The petitioners had ample time within which to challenge the jurisdiction of the NLRC to act on the case. Not having exercised this option, they are deemed to have acceded to the latter's jurisdiction. The Motion to Suspend Proceedings was filed five (5) days after the NLRC resolution had already been promulgated. There was in effect nothing more to suspend. They cannot now bring up this issue before this Court. The rule on estoppel applies.

Moreover, even if the Court en banc in the case of *Calderon v. Carale*, would pronounce that the appointments of the respondents require confirmation by the Commission on Appointments, it does not necessarily follow that their official acts, prior to such ruling, are invalid. In such a case, these appointees would be considered ad interim officers or at the very least would fall under the de facto doctrine. In either case, their acts would still be recognized.

The NLRC ruled that the respondent was deprived of due process.

No written notice with a statement of the reasons for disciplinary action was given to him. Article 277(b) of the Labor Code as amended is explicit on the requirement of a written statement being given to the worker whose employment is sought to be terminated. The worker should be informed in writing of the causes for termination and be given ample opportunity to defend himself.

The absence of written notice is mitigated but not condoned by the on-the-spot verbal order to explain the respondent's gross neglect of duty. The respondent denies having been so ordered. However, it is most unlikely that an employee who caused P210,407.10 damage to an expensive and brand new foyer carpet and to hotel furniture sets would be allowed to leave without being called down and ordered to explain. It is unnatural and, in fact, refuted by the records that the need for disciplinary action would be ignored until a much later date. The

incident happened on October 29, 1987. On November 1, 1987, a written memorandum of two infractions was served on him. The first violation was for again sleeping on duty inspite of his having been given a "last chance" during the latest confrontation. The second was for the pouring of water at the end of the flooring which resulted in the damaged carpet. The error of the Supervisor was in not ordering Sisayan to explain and not informing him that if the explanation is unsatisfactory, to face an investigation that may result in disciplinary action. Instead, the private respondent was given a suggestion to resign immediately or be terminated in his employment.

The petitioner alleges that Sisayan was given notice as follows:

"When respondent Sisayan received the letter from petitioner Caculitan, he approached his said department head and was advised again to explain in writing why he should not be disciplined for the rain water incident and other serious infractions of company rules and regulations and to present his side before said petitioner with the assistance of his chosen representative. For the second time, respondent Sisayan failed to comply with said directive.

2. He then proceeded to the Personnel Office where he was also advised to submit his written explanation. Respondent Sisayan instead informed the Personnel Office that the incident report which he filed will be his explanation regarding the incident.

4. The investigation was conducted by the Personnel Office from November 1, 1987 up to November 10, 1987 and respondent Sisayan was informed of said investigation but he failed to come and attend the same nor did he submit his written explanation.

5. It was only on November 12, 1987, that the Personnel office of the petitioner resort finally came out with the memorandum of termination of respondent Sisayan." (Rollo, p. 333)

The respondent denies the above allegations as complete falsehoods. He contends that the November 1, 1987 memorandum asking him to resign or else face dismissal is not the written notice required by law.

On this issue, we sustain the respondent. The provisions of the Labor Code on notice and hearing being essential before an employee may be dismissed are too basic for employers to ignore. In the heat of anger, an employer may scold an employee and require him to explain or get out of the firm. This verbal outburst cannot take the place of the mandatory written notice. Employers should have learned by now how to deal with this situation. It does not serve the purposes of labor legislation or the protections of the due process clause if the Court allows verbal notices, flatly refuted or denied by the worker, to take the place of formal notices.

Notwithstanding the failure of the petitioner to follow the established procedures for imposing the penalty of dismissal, we cannot sustain the order reinstating respondent Sisayan with three years backpay. From the records, it does not appear that the private respondent is the kind of employee who should be forced upon an employer.

There is no dispute over the fact that the respondent was ordered to attend to the problem of the leaking air-handling unit of the air-conditioner. The big buckets earlier placed were overflowing. The respondent had two laborers following his orders. He blames the two workers for emptying the buckets not into the gutter but on the ceiling floor from where it flowed into the carpet, wallpaper, and furniture below. The workers were under his control and supervision at that time. They allege that they were acting under his orders when they poured the water at the wrong place. The respondent bears the responsibility and cannot pass it off to the laborers whom he instructed.

The respondents' job was Shift Head Engineer. Among his responsibilities are:

"1.

Responsible for the supervision of repair and maintenance per shift.

xxx xxx xxx

5.

Monitor closely the hotel water supply in close coordination with TDC to ensure ample supply and proper water treatment.

6.

Monitor closely with TDC, MERALCO, NPC, regarding power distribution to maintain a stable power supply necessary for hotel machineries.

xxx xxx xxx

8.

Implement safety in all phases of work to avoid accident that could hamper normal working conditions.

9.

Prepares day-to-day accomplishment report on the operation, repair, maintenance of hotel machineries, building and other facilities.

10.

Supervise and implement electrical, mechanical, civil works installation in accordance with the plan and specifications.

11.

Monitor closely all outside job contractors on electrical, mechanical, civil works in accordance with the terms and agreement laid on the particular job contract.

xxx xxx xxx

14.

Develop and implement solution to day-to-day operating problems of engineering and refer major undertaking superior.

XXX XXX XXX

17.

Implements preventive maintenance and repair schedule for all hotel machinery, civil works and other facilities in accordance with maintenance and repair plan as prepared by the Chief Engineer.

18.

In the absence of the Chief and Assistant Chief Engineer act as the Safety Engineer and Fire Captain.

19.

Performs duties common to all supervisors and other duties as may be assigned.” (Rollo, pp. 6-7)

It can be seen that an Engineer's job is not limited to emptying of water buckets or mopping up a flooded floor. It was his job to attend to the leaking equipment and if the repair was beyond his competence, to implement remedial measures that would avoid or minimize damage to company properties until the competent help arrives. He is not an ordinary laborer whose lapses may be more easily condoned. He is an Engineer.

There is evidence to show that the two laborers originally intended to bring the buckets down and empty them in the sink at the Room Service Area. However, respondent Sisayan ordered them to empty the buckets at the other end of the ceiling because he thought that there was a gutter at that end. For want of formal notice, we do not accept the various other evidence introduced by the petitioner as representing additional facts. However, they serve as reasons why the employer has lost faith in the trustworthiness and competence of its Engineer and why the order to reinstate with backwages should be set aside.

The petitioner further points out that the respondent in a span of less than one year committed no less than eleven (11) infractions of company rules as follows:

"December 2, 1986 - No whereabouts. Can't be located in all areas of the hotel.

December 7, 1986 - Slept at the mezzanine of the utility building while on duty.

December 8, 1986 - No whereabouts. Cannot be located anywhere in the hotel.

December 9, 1986 - Sleeping while on duty.

December 16, 1986 - Sleeping while on duty.

December 23, 1986 - AWOL. No Shift Engineer on duty.

December 27, 1986 - AWOL. No Shift Engineer on duty.

December 28, 1986 - Sleeping while on duty." (Rollo, p. 10)

The failure of the petitioner to formally charge, investigate, and punish the respondent for the above violations when committed is not fatal to its cause. The November 1, 1987 memorandum shows that the attention of Mr. Sisayan had earlier been called and his lapses were forgiven on his promise to follow the rules. However, on the night before the damage to the carpet was inflicted, the respondent again slept while on duty. He could no longer be pardoned by management.

The attempts to minimize the extent of the damage are non-availing. Anyone who has ever installed brand new carpeting in his office will know that the damage caused by buckets of water being poured on it cannot be repaired by subsequently mopping and drying it up. The carpet can still be used but the damage remains. At any rate, the issue of responsibility for the value of damaged property can be resolved in the civil case filed by the petitioner against the private respondent. The non-reinstatement of the private respondent is based on the evidence which shows why he should not be retained and not on the extent of the damage caused.

WHEREFORE, the petition is hereby GRANTED. The resolutions of the National Labor Relations Commission dated July 28, 1989 and May 31, 1990 are Reversed and Set Aside. The Temporary Restraining Order dated July 16, 1990 is hereby made permanent. The complaint for illegal dismissal is dismissed. For its failure to accord due process, the petitioner is ordered to pay the private respondent the amount of Two Thousand Pesos (P2,000.00).

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Davide, Jr., JJ., concur.

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