

RAFAEL G. PALMA, PETITIONER, VS. THE HON. THIRD DIVISION NATIONAL LABOR RELATIONS COMMISSION AND SAMAHANG MAGSASAKA, INC., RESPONDENTS.

G.R. No. 94279, June 26, 1992

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

In this special civil action of certiorari, petitioner seeks to nullify and set aside the decision of the Third Division of the National Labor Relations Commission which reversed the resolution dated August 8, 1986 of the Second Division, affirming the Labor Arbiter's decision dated March 12, 1985.

Rafael Palma, who had been employed since 1965 as a meter reader and bill distributor, filed on January 5, 1984, a complaint for illegal dismissal against the Samahang Magsasaka, Inc. (SMI), by virtue of its Resolution No. 90-83 dated December 20, 1983, ordering his dismissal from the service for dishonesty by reason of his having been caught connecting jumpers or similar devices to steal electricity from the company. The resolution of dismissal reads:

"EXCERPT FROM THE MINUTES OF THE REGULAR MEETING OF THE BOARD OF DIRECTORS
HELD ON DECEMBER 20, 1983 (IN LIEU OF DECEMBER 8)

"PRESENT:

CESAR E. VERGARA - CHAIRMAN

VICENTE E. MEDINA - VICE-CHAIRMAN

JUAN S. DALUZ - PRESIDENT

ANGEL M. TINIO - MEMBER

REYNALDO A. CARLOS - MEMBER

ERLINA DE GUZMAN - MEMBER

CATALINA DE GUZMAN - MEMBER

SERGIO S. OCAMPO - MEMBER

GREGORIO L. SOTO, JR. - MEMBER

EVANGELINA V. VERGARA - MEMBER

"ABSENT:

MARTIN H. TINIO - MEMBER

RESOLUTION NO. 90-83

"On motion of Member Reynaldo Carlos, duly seconded by Vice-Chairman Vicente Medina,

"BE IT RESOLVED, That Mr. Rafael Palma, employee of this corporation be separated from the service in view of the previous investigation of management finding the same guilty of dishonesty;

"RESOLVED, FURTHER, that outright dismissal be made to any employee of the corporation who will be caught connecting jumpers or any similar devices to customers of the corporation;

"RESOLVED, FINALLY, that the excerpt of this resolution be released and confirmed immediately.

"Carried unanimously.

"I HEREBY CERTIFY to the correctness of the foregoing resolution.

"(Sgd.) ATTY. PACIFICO F. WYCOCO Corporate Secretary" (p. 83, Rollo.)

Palma alleged in his Memorandum dated June 21, 1984, that he was denied due process for only after the resolution of dismissal had been passed on December 20, 1983 were sworn statements taken from some customers, namely: Juanito R. Lopez on January 24, 1984, Cenon Buse, Jr. on January 12, 1984 and Elsie Jardiel on February 4, 1984, to support the said resolution.

The Samahang Magsasaka, Inc., on the other hand, alleged that:

"The acts of Rafael Palma that led to his dismissal consist of serious misconduct, fraud and willful breach of trust as contained in the Sworn Statements of Juanito Lopez, Cenon Buse, Jr. and Elsie Jardiel wherein he placed jumpers that brought estimated lost (sic) to the Samahang Magsasaka, Inc. in the amount of P7, 958.80." (p. 41, Rollo.)

The affiants were SMI's electric consumers in whose houses petitioner Palma had allegedly connected electric jumpers.

After the submission of the parties' position papers, a decision dated March 12, 1985 was rendered by the Labor Arbiter finding the private respondent liable for illegal dismissal, and ordering the immediate reinstatement of the petitioner with full backwages. Said the Labor Arbiter:

"Anent the issue of whether or not legal and valid ground exists to justify the dismissal of complainant herein, it was alleged by respondent that complainant was guilty of serious misconduct, fraud and willful breach of trust. Apparently, these grounds are based solely on the alleged finding of respondent that complainant Palma was guilty of placing and/or connecting electric jumpers in the houses of Messrs. Juanito Lopez, Cenon Buse, Jr., and Madam Elsie Jardiel who executed affidavits to this effect. Thru these Affidavits, respondent would like to prove that it was complainant himself who placed and/or connected electric jumpers in the houses of these people. We do not agree. These Affidavits, to our mind, are insufficient to prove that it was complainant Palma who actually placed and/or connected electric jumpers in their houses. Their testimonies cannot be given due weight and merit for the simple reason that they are not impartial witnesses. It must be noted that they were caught by respondent with illegal jumpers and their electrical services maybe disconnected if they will not testify in favor of respondent. In other words, they have a motive to testify in favor of respondent. We are of the view that the evidence on record are not sufficient to justify the dismissal of complainant herein.

"In the absence of clear and convincing evidence pointing to the complainant as the guilty party, we find that there is no legal and valid ground to justify his dismissal, hence, his dismissal is illegal.

"WHEREFORE, IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered directing respondent Samahang Magsasaka, Inc. to reinstate complainant, Rafael G. Palma, to his former position as meter reader and bill distributor with full backwages and other benefits and without loss of seniority rights from the date of his illegal dismissal on 20 December 1983 up to the date of actual reinstatement." (pp. 50-51, Rollo.)

The employer appealed to the NLRC but its appeal was dismissed by the Second Division in a Resolution dated February 27, 1986, on the ground that it was filed late (pp. 71-72, Rollo). However, on motion for reconsideration, the private respondent was able to prove that its appeal, which was filed by mail, was timely, hence, the Second Division vacated its Resolution of February 27, 1986 and gave due course to the Samahan's appeal. Nevertheless, after a judicious examination of the records, the Second Division found no reversible error in the decision of the Labor Arbiter. On August 8, 1986, it dismissed the employer's appeal.

On January 31, 1990, the Third Division, acting as Commission en banc, rendered a decision, declaring that:

"WHEREFORE, premises considered, the Motion for Reconsideration (appeal to the Commission en banc) is hereby GRANTED. The impugned Decision of the Labor Arbiter a quo is SET ASIDE and a new one entered:

"(a) Upholding the dismissal of the complainant-appellee as justifiably grounded on serious misconduct and willful breach of trust;

"(b) Accordingly, dismissing the complaint for illegal dismissal; but

"(c) Ordering respondent/appellant to grant complainant-appellee the amount of p1,644.00 the equivalent of his one (1) month salary, by way of indemnity, for failure of the former to substantially comply with the due process requirement." (pp. 109-110, Rollo.)

Hence, this petition for certiorari filed by Palma who alleges that the public respondent committed grave abuse of discretion when it treated the Samahan's "Appeal to the Commission en banc" as a motion for reconsideration despite the fact that it was a mere pro-forma appeal prohibited under the rules.

There is merit in the petition. It may be noted, as the Solicitor General aptly pointed out, that the NLRC, Third Division, treated the Samahan's "Appeal to the Commission en banc" as a motion for reconsideration of the Second Division's resolution dated August 8, 1986.

The Revised Rules of the NLRC clearly and expressly prohibit a division of the NLRC from resolving motions for reconsideration of the orders, resolutions or decisions of another division. The motion must be resolved by the Division of origin, in this case, the Second Division. The rule provides:

"Sec. 9. Motions for Reconsideration - Motions for reconsideration of any order, resolution or decision of the Commission shall not be entertained except when based on palpable or patent errors, provided that the motion is under oath and filed within ten (10) calendar days from receipt of the order, resolution or decision, with proof of service that a copy of the same has been furnished, within the aforesaid reglementary period, the adverse party and provided further, that only one such motion shall be entertained.

"Subject to the provisions of Section 3, Rule IX of these Rules, motions for reconsideration of an order, resolution or decision of a Division shall be resolved by the Division of origin." (Sec. 9, Rule X, now Sec. 14, Rule VII, Revised Rules of the NLRC.)

Clearly, the Third Division should not have entertained the Samahan's motion for reconsideration because:

(1) It was filed out of time. The movant herein admitted that it received a copy of the August 8, 1986 resolution of the Second Division on September 9, 1986, but it filed a motion for reconsideration on September 22, 1986, or three (3) days past the reglementary 10-day period for filing a motion for reconsideration or appeal. Said decision

or resolution of the NLRC's Second Division had become final and executory on September 20, 1986.

(2) The rule is that "only one such motion (for reconsideration) shall be entertained." The Samahan's "Appeal to the Commission en banc" was interposed after the NLRC's Second Division had: (1) dismissed the appeal; and (2) denied the Samahan's motion for reconsideration. The Third Division exceeded its jurisdiction and committed a grave abuse of discretion in acting upon said second motion for reconsideration which the Rules do not allow to be filed.

WHEREFORE, the petition for certiorari is GRANTED. The decision dated January 31, 1990 of the National Labor Relations Commission, Third Division, is hereby annulled and set aside. The resolution of the NLRC Second Division dated August 8, 1986 is hereby REINSTATED, but the award of backwages to the petitioner is limited to three (3) years in accordance with existing jurisprudence (*Sealand Service, Inc. vs. NLRC*, 190 SCRA 347; *Llosa Tan vs. Silahis International Hotel*, 181 SCRA 738). Costs against the private respondent.

SO ORDERED.

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

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