

JOEL MENDOZA, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, SAN MIGUEL CORPORATION, MAGNOLIA DIVISION AND CONRAD YUMAN III, RESPONDENTS.

G.R. No. 94294. March 22, 1991

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

Entrenched in our labor laws is the right of an employee or laborer to due process before steps may be taken to effect the termination of his employment. The presence or absence of due process is the issue addressed in this petition.

Petitioner was a regular employee (salesman) of private respondent San Miguel Corporation (SMC), Magnolia Division, assigned to its Baguio Sales Office.

On June 2, 1988, petitioner submitted to private respondent Conrad B. Yumang III, then Regional Sales Supervisor, an accident report that reads as follows:

"This is to inform you about the accident that happened last May 31, 1988 at around nine thirty to ten thirty in the evening along Holy Ghost in Imelda Village, Baguio City.

I left the sales office at about 7:05 in the evening after submitting my remittances on the said date, I was constrained to return to Lina's Mini-Mart along Marcos Highway to collect my uncollected cash sales for the purpose that no short remittance will be reflected on my report due to month ending. Mr. Nick Villabona came along with me.

While waiting for the owner of the said outlet, Mr. Nick Villabona recalled that there is a missing freezer, who at that time is conducting a physical freezer inventory. I suggested that we have to look for it. We were informed that Mr. Roberto Tan of Bollian's brought the freezer at the vicinity of Imelda Village. And then, while we were maneuvering a right turn curve, suddenly two men crossed the road coming from the left side. To avoid hitting them, I slowed down and moved the truck a little to the left. Not knowing that the road was softened by the constant heavy downpour of rain. All of a sudden, the left shoulder gave way and the truck with Plate No. SMC 408 slowly slipped down and turned-turtle in its left side. Hitting first the separate kitchen located in front of the house which was badly damaged and then landed at the left portion of the house. Because of the incident, we were too confused and shocked that we proceeded first to the house of Mr. Nick Villabona to inform his wife. Not knowing what to do, while Nick Villabona was experiencing pain due to the incident, we decided to go to SLM Hospital for medical check-up and treatment. From there I called-up the police station to report the accident that happened.

For your information."[1]

When private respondent Yumang made his own inquiries pursuant to superior instructions to conduct a formal investigation, he found out that the police traffic report shows that the date and time of the accident was on June 1, 1988 at 1:00 o'clock in the early morning thereof not at 7:00 o'clock in the evening of May 31, 1988 as per

petitioner's report. Hence, respondent Yumang conducted a formal investigation on June 16, 1988 to determine the truth about the accident. The extracts from the written investigation are as follows:

"Q

Are you willing to give voluntary statement regarding the vehicular accident involving your assigned unit bearing Plate No. NMC-408 on May 31, 1988?

A

Yes, boss.

x x x x x x x x

Q

Per sales office record, on May 31, 1988, you incurred a short remittance in the amount of P3,024.00 in the name of Lina's Mini-Mart. This was paid only on June. Why?

A

I was so busy in following up my police report, that is why payment was only made June 2.

x x x x x x x x

Q

I reviewed your accident report dated June 2 and even personally visited the site and made some inquiry [sic] within the vicinity and even talk to the owner of the house. I found some inconsistencies [sic] with your statement. Comparing it also with the police report you have submitted, can we go over it again and discuss?

A

Yes, sir.

Q

Who informed you that the missing freezer is at the vicinity of Imelda Village? When you left Marcos Highway, are you definite on the address where to find the missing freezer at Imelda Village?

A

I think sir that at this point I can no longer hide the truth from you, so I would like to tell you the whole truth.

Q

Then tell me exactly what happened.

A

I checked out at 7:05 p.m. without Mr. Fragante's knowledge and I asked Mr. Villabona to ride with me and asked him a favor to accompany me to Lina's Mini-mart along Marcos Highway to collect my uncollected cash sales to avoid a short remittance for that day, but the owner was not around. At first, Mr. Villabona was hesitant to go with me because the PBA game is about to start. I told him that it won't take long then they can go back to watch the game together [sic].

Since the owner was not around, we proceeded to Mr. Villabona's house and watched the PBA games. After the PBA games as a sign of gratitude for the favor I invited Mr. Villabona to have a drink at Rock Session using the said unit. We stayed there up to 12:00 midnight. Then we decided to go home. It was raining hard that time and two of the band members asked us for a ride. It so happened that one of the band members is living at the Holy Ghost Extension. After we dropped him off, about a few meters after, the accident occurred.

Partly, I reported it the other way in my accident report dated June 2, 1988 because I'm too confused and very much afraid that the damage was so big and it bothers my mind a lot. And we thank God we are still alive.

Q

I have no more question to ask unless you have anything else to add.

A

Sir tulungan mo naman ako for the last time. Please. I am appealing for the offense committed which is in your behalf causes you a big problem.[sic] I am really very sorry sir for what has been done. I realized the gravity of my offense and I know that a heavy penalty would be imposed upon me. And for this, I am begging for your kind consideration and hoping that you will extend 'a helping hand not just for me but also for my family.'"[2]

In a memorandum dated July 5, 1988, petitioner was relieved by private respondent SMC of the duties and responsibilities as tetra salesman of the Baguio Sales Office.

On August 15, 1988, petitioner was served a letter of termination that reads as follows:

"After a thorough investigation and due deliberation of the charges against you for gross negligence in the performance of duties, Management has found you guilty of the same and has decided to terminate your services with the Company effective at the closing of business hours of August 16, 1988." [3]

Consequently on August 23, 1988, petitioner filed a complaint for illegal dismissal with the labor arbiter. In due course a decision was rendered by said arbiter on April 26, 1989, the dispositive part of which reads as follows:

"VIEWED FROM THIS LIGHT, judgment is hereby rendered with the following dispositions:

- That the complainant was illegally dismissed, hence respondents are directed to reinstate him to his former position without loss of seniority rights and backwages to be computed from the time that it was withheld from him up to the time of his reinstatement; further, respondents are directed to pay 10% of the totality of the award as attorneys fees; and
- That the counterclaim of the respondent is denied.

We opt not to award moral and exemplary damages." [4]

Private respondent SMC appealed said decision to public respondent National Labor Relations Commission (NLRC). The appeal was opposed by petitioner.

On May 28, 1990, public respondent NLRC promulgated a resolution dismissing petitioner's complaint for lack of merit. [5]

Hence, the herein petition for certiorari, the main thrust of which is as follows:

"I

1. THE HONORABLE COMMISSION COMMITTED SERIOUS AND PALPABLE ERROR AMOUNTING TO GRAVE ABUSE OF DISCRETION IN FINDING THE PRIVATE RESPONDENTS TO HAVE AFFORDED THE PETITIONER DUE PROCESS DESPITE THE ABSENCE OF NOTICE AND HEARING.

2. THE HONORABLE COMMISSION COMMITTED SERIOUS AND PALPABLE ERROR AMOUNTING TO GRAVE ABUSE OF DISCRETION IN FINDING THAT THE VIOLATIONS COMMITTED BY THE PETITIONER WARRANTED HIS DISMISSAL FROM THE SERVICE DESPITE THE FACT THAT UNDER PRIVATE RESPONDENTS' OWN DISCIPLINARY RULES THE VIOLATIONS ALLEGED DO NOT PRESCRIBE THE PENALTY OF DISMISSAL.

3. THE HONORABLE COMMISSION COMMITTED SERIOUS AND PALPABLE ERROR AMOUNTING TO GRAVE ABUSE OF DISCRETION IN FINDING THE VIOLATIONS COMMITTED BY THE PETITIONER WARRANTED HIS DISMISSAL DESPITE THE FACT THAT THE PRIVATE RESPONDENTS' DISCIPLINARY RULES WERE MISAPPLIED ON THE PETITIONER." [6]

There can be no dispute about the requirement that before any regular employee or laborer may be dismissed from service by the employer he must be given due notice and an opportunity to be heard.

Petitioner contends that the investigation conducted by private respondent Yumang was only to determine the truth about the reported accident and not to determine his responsibility arising therefrom and to impose disciplinary action.

The Court is not impressed.

During the investigation it appears that he knew all the time that the investigation involves his administrative responsibility to his superior, as he made this statement:

"A

Sir tulungan mo naman ako for the last time, please. I am appealing for the offense committed which is in your behalf causes you a big problem. I am really very sorry sir for what has been done. I realized the gravity of my offense and I know that a heavy penalty would be imposed upon me. And for this, I am begging for your kind consideration and hoping that you will extend a helping hand not just for me but also for my family.[7]

In no uncertain terms he admitted the gravity of his offense and asked that a heavy penalty should not be imposed on him.

At such investigation private respondent SMC found that petitioner violated the company's policy on employees conduct on three counts, namely (1) driving under the influence of liquor; (2) unauthorized use of company vehicle; and (3) damage to company vehicle which was a total wreck. As a matter of fact, Mr. and Mrs. Pablo Cognoden, the owner of the house the kitchen of which was hit by the delivery truck driven by petitioner sought from SMC the amount of P50,000.00 for actual damages.

The rules laid down by the company for the investigation of an employee before his termination need not be observed to the letter. It is enough that there was due notice and a hearing before a judgment or resolution thereof is made.[8]

Due process contemplates freedom from arbitrariness. What it requires is fairness or justice; the substance rather than the form being paramount. When a party has been given the opportunity to be heard, then he was afforded due process.[9]

Petitioner also assails the severity of the penalty imposed upon him alleging that he should have merited a suspension only considering his past performance.

Unfortunately petitioner does not appear to be a first offender. Aside from the infractions he was found to have committed, it appears that petitioner falsified the truth when he made a false report about the incident to private respondent SMC to cover up for his misdeeds. Moreover on previous occasions, petitioner committed violations of company rules and regulations concerning pricing as a salesman of the company in a way that is detrimental to his employer. On one occasion, he failed to remit collections, so that in 1986 he was suspended for thirty days. Thus, the totality of the infractions that petitioner has committed justifies the penalty of dismissal.

The Court, therefore, finds that the public respondent NLRC did not commit a grave abuse of discretion in reversing the decision of labor arbiter and upholding the dismissal of petitioner.

WHEREFORE, the petition is DISMISSED, without pronouncement as to costs.

SO ORDERED.

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

[1] Annex 1, Comment of private respondent, page 65, rollo.

[2] Annex 2, Comment of private respondent; under-scoring supplied.

[3] Annex 5, Comment of private respondent.

[4] Annex A to petition; pages 27 to 28, rollo.

[5] Annex C, *ibid* pages 29 to 36, rollo.

[6] Pages 12 to 13, rollo.

[7] Annex 2, Comment of private respondent; page 114, rollo.

[8] Ruffy vs. National Labor Relations Commission and Central Azucarera Don Pedro, G. R. 84193, February 15, 1990.

[9] B. Sta. Rita & Co., Inc. vs. Arroyo, 168 SCRA 585 (1988); Antipolo Realty Corporation vs. National Housing Authority, 153 SCRA 399 (1987); Firestone Tire and Rubber Company of the Philippines vs. Lariosa, 148 SCRA 187 (1987).

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