

GUALBERTO R. ESTIVA, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, JAIME KOA AND OPSONIN CHEMICAL INDUSTRIES PHILIPPINES CORPORATION, RESPONDENTS.

G.R. No. 95145. August 05, 1993

Ponente: BIDIN, J.

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BIDIN, J.:

Petitioner Gualberto A. Estiva seeks a modification of the decision rendered by respondent National Labor Relations Commission (NLRC) dated May 31, 1990, which affirmed the Labor Arbiter's decision by holding that there is sufficient basis for petitioner's termination, hence, the award of separation pay without reinstatement is in order (Rollo, p.44).

The undisputed facts of the case are as follows:

Petitioner was employed by private respondent Opsonin Chemical Industries Philippines Corporation (Opsonin), on March 1, 1986, as operations manager with a basic monthly salary of P6,500.00. As operations manager, his task was to conceptualize or conduct feasibility studies, formulate overall marketing plans, train field employees and office staff as well as provide insights to the company owners on the complexities of pharmaceutical marketing and distribution operations.

On September 16, 1986, petitioner was appointed sales manager of respondent company with a salary of P11,000.00 and additional fringe benefits.

Towards the end of 1987, however, private respondents gradually clipped petitioner's powers as sales manager. Respondent Jaime Koa, Chairman of the Board of respondent corporation, began to discharge some of the functions of the sales manager, such as meeting with petitioner's subordinates, and preparing and signing the appointment papers of probationary and permanent employees.

On December 12, 1987, private respondent Koa formally announced that he was assuming the position of sales manager of respondent company.

On January 5, 1988, petitioner filed a complaint with the Arbitration Branch of respondent Commission for illegal dismissal, illegal deduction, 13th month pay, service incentive leave pay, reimbursement of advanced expenses, with prayer for moral and exemplary damages, plus attorney's fees.

A day after, or January 6, 1988, private respondents issued a memorandum addressed to petitioner, charging him with the following accusations, to wit:

- “(1) that you have been absent since December 27, 1987 up to the present time without prior notice,
- “(2) that you have never reported on time, contrary to our company rules and regulations,
- “(3) that you have refused without justifiable reason, to observe regular office hours,

“(4) that you have refused to sign the company logbook, regarding your ingress and egress from the company, and

“(5) that you have never submitted weekly reports of your accomplishments as required from you, pursuant to our company rules and regulations.” (Rollo, pp. 12-13)

The memorandum also directed petitioner to submit a written explanation within forty-eight (48) hours from receipt of the said memorandum why no disciplinary sanction should be imposed upon him.

Meanwhile, the Labor Arbiter assigned to hear petitioner's case directed both parties to file their respective position papers.

In his position paper, petitioner alleged that prior to his employment with respondent company, he was employed with United Laboratories for thirteen (13) years. He was enticed by respondent company to leave his former employment by offering him a promising job with a relatively higher salary and additional fringe benefits. His employment was allegedly abruptly terminated on December 22, 1987, without stating the reason or reasons for such termination nor was he served any notice of termination contrary to the requirement of Batas Pambansa Blg. 130. He claimed that his termination from employment caused him anguish and humiliation, especially since it took place during the Christmas season.

Petitioner prayed that he be awarded his 13th month pay including his sales incentive pay for the period of August to November 1987, service incentive leave pay, reimbursement of advanced expenses, ECOLA, performance bonus, separation pay and unpaid salary, as well as the option to buy a car of the company. He further prayed for moral and exemplary damages.

In controversy, private respondents denied liability for petitioner's claims and alleged that petitioner's letter of appointment does not bear the approval or signature of respondent Koa, Oponin's Chairman of the Board. Private respondents claimed that the dismissal was justified for the reasons contained in private respondents' memorandum dated January 6, 1988.

In a decision dated May 31, 1989, the Labor Arbiter found that petitioner was denied due process, declared that petitioner was entitled to one-month pay from July, 1986 to December, 1987, and further ordered private respondents to pay the sum of P2,910.00 which was deducted from petitioner's pay envelope. All other claims, including moral and exemplary damages, were deemed unmeritorious due to the absence of fraud or bad faith on the part of private respondents. The dispositive portion of the Labor Arbiter's decision reads:

“WHEREFORE, respondents Oponin Chemical Industries’ Philippines Corporation (Pharmaceutical Division) and/or Jaime C. Koa, are hereby ordered to pay complainant the following:

1. P11,000.00 separation pay;
2. P11,000.00 13th month pay (1987);
3. P5,500.00 13th month pay (July-December 1986);
4. P2,910.00 illegal deduction from complainant's salary;

plus 10% attorney's fees of the total award. All the other claims including the claim for moral and exemplary damages are hereby DENIED.

“SO ORDERED.” (Rollo, p. 21)

Petitioner appealed the foregoing decision to respondent Commission, claiming that while the Labor Arbiter found that he was unjustly dismissed from employment, the Labor Arbiter did not order his reinstatement with

backwages and denied his prayer for moral and exemplary damages.

In a resolution dated May 31, 1990, respondent Commission found that petitioner was indeed dismissed without the required notice and hearing. However, it held that there was sufficient basis for petitioner's termination since the position of Sales Operation Manager which involves trust and confidence was betrayed by petitioner as shown by private respondents' memorandum (Rollo, pp. 43-44). Accordingly, it dismissed petitioner's appeal as follows:

"WHEREFORE, premises considered, the Appealed Decision is as it is hereby AFFIRMED and the Appeal dismissed for lack of merit.

"SO ORDERED." (Rollo, p. 45)

Unsatisfied with respondent Commission's verdict, petitioner comes before us through this petition for certiorari.

When required to comment, the Solicitor General joined the petitioner and submitted an adverse comment to the decision under review.

It is not disputed that private respondents failed to observe the twin requirements of due process, i.e.; due notice and hearing, when petitioner was unceremoniously dismissed as Sales Manager of respondent company on December 22, 1987. As aptly found by the Labor Arbiter:

"On the issue of dismissal, it is clear that the complainant was deprived of his functions as sales manager on December 22, 1987 by the Board Chairman, Mr. Koa. In fact, this was not denied by respondent. All that respondents issued on January 6, 1988 was a letter containing the charges against the complainant, but whether or not the letter was received by complainant, the letter does not even indicate nor there (sic) was an allegation from the respondent that it reached the complainant. Verily, respondent violated or ignored the notice requirement under B.P. 130. Complainant was denied due process so to speak, before he was dismissed. In (sic) this reason, the respondents should pay him his separation pay, equivalent to one month pay." (Rollo, p.19)

Indeed, petitioner was deprived of the opportunity to be heard on the charges against him as stated in private respondents' memorandum. Worse, petitioner was actually dismissed from employment long before he was notified or made aware of the acts and omissions he allegedly committed in violation of company rules and policies.

Quite clearly, the act of private respondents violated petitioner's right to due process before being terminated from employment. The requirements for the dismissal of an employee are two-fold: the substantive and the procedural. The twin requirements of notice and hearing constitute the essential elements of due process in cases of dismissal of employees (*Salaw v. NLRC*, 202 SCRA 7 [1991]).

We have ruled that to constitute a valid dismissal, two requisites must concur: (1) the dismissal must be for any of the causes provided for under Article 282 of the Labor Code, and (2) only after the employee has been notified in writing and given the opportunity to be heard and defend himself as required under Sections 2 and 5, Rule XIV, Book V of the Implementing Rules (*Imperial Textile Mills, Inc. v. NLRC, et al.*, G.R. No. 101527, January 19, 1993).

To meet the requirements of due process, the law requires that an employer must furnish the worker sought to be dismissed with two (2) written notices before termination of employment can be legally effected, i.e.; (1) a notice which appraises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the subsequent notice after due hearing, which informs the employee of the employer's decision to dismiss him (*Pepsi-Cola Bottling Co. v. NLRC*, 210 SCRA 277 [1992]). Obviously, private respondents opted to ignore petitioner's right to due process. Petitioner was effectively dismissed as early as the end of 1987 when his powers

and functions were gradually taken from him. As correctly observed by the Solicitor General, the memorandum given to petitioner was a mere afterthought of private respondents since it was issued after petitioner lodged his complaint with the Arbitration Branch of respondent Commission (Rollo, pp. 72-73). An employer may not perfunctorily dismiss an employee and ask questions later (BLTB Co. v. NLRC, 209 SCRA 430 [1992]).

Further, the fact that petitioner is a managerial employee is of no moment. Settled is the rule that managerial employees, no less than rank-and-file laborers are entitled to due process (Lawrence v. NLRC, 205 SCRA 737 [1992]; Hellenic Philippine Shipping, Inc. v. Siete, 195 SCRA 179 [1991]).

Private respondents seek to justify petitioner's dismissal by alleging loss of confidence. In support thereof, they cite respondent Commission's observation, to wit:

"After an indepth review of the record, We agree with appellant that he was terminated without the required notice and investigation as spelled out in BP Blg. 130 now Article 277 of the Labor Code as amended, but there is sufficient basis for appellant's termination, hence the award of separation pay without reinstatement is in order. As Sales Operation Manager, appellant's position involves trust and confidence and the same was betrayed as shown in the memorandum issued by appellee to appellant." (Rollo, pp. 43-44)

As to how the "sufficient basis" vis-a-vis the betrayal of trust came about, respondent Commission failed to discuss in detail. After finding that petitioner was denied due notice and hearing, respondent Commission now comes with a pronouncement that petitioner has betrayed his employer's trust and confidence based on the latter's say so. This, the Court cannot countenance. Records are bereft of any proof that petitioner was guilty of the infractions aimlessly stacked against him by private respondents. On the contrary, what is clear is that petitioner was illegally dismissed. Such being the case, his reinstatement with payment of backwages is only proper (Spartan Security and Detective Agency, Inc., v. NLRC, 213 SCRA 528 [1992]).

As provided for under Article 279 of the Labor Code:

"Art. 279 Security of Tenure - In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement."

Private respondents further argue that in terminating the services of an employee, proof beyond reasonable doubt of the employee's misconduct is not required (Reyes v. Minister of Labor, 170 SCRA 134 [1989]). Thus it is maintained that if there is some basis for such loss of confidence or if the employer has reasonable ground to believe that the employee concerned is responsible for misconduct, the same serves as a sufficient basis to dismiss an employee.

The Court disagrees. The basic premise for a valid dismissal on account of wilful breach of trust is that the employee concerned holds a position of trust and confidence and it is the breach of this trust that results in the employer's loss of confidence in the employee (San Miguel Corporation v. NLRC, 211 SCRA 353 [1992]). A position of trust and confidence is one where a person is entrusted with confidence on delicate matters, or with the custody, handling or care and protection of the employer's property (Panday v. NLRC, 209 SCRA 122 [1992]).

In the instant case, there is no question that as sales manager of respondent company, petitioner holds a position vested with trust and confidence. It is in this regard that the employer is possessed with an inherent right to dismiss an employee for loss of confidence. We have a plethora of decisions that supports and recognizes this authority of the employer to sever its relationship with the employee involving such cases (Top Form Manufacturing Co., Inc. v. NLRC, et al., G.R. No. 65706, December 11, 1992). However, loss of confidence as a

valid cause to terminate an employee must nonetheless rest on an actual breach of duty committed by the employee and not on the employer's imagined whim or caprice (*Imperial Textile Mills v. NLRC, et al., supra*).

In other words, loss of confidence as a ground for dismissal requires substantial proof (*PNOC-Energy Development v. NLRC, 201 SCRA 487 [1991]; De Vera v. NLRC, 200 SCRA 439 [1991]*). The employer's evidence must clearly and convincingly establish the facts and incidents upon which the loss of confidence in the employee may fairly be made to rest (*Commercial Motors Corporation v. Commissioners, et al., 192 SCRA 191 [1990]*).

In the case at bar, the private respondents failed to prove that the dismissal of petitioner on account of loss of confidence arose from particular proven facts. No opportunity was given to petitioner to meet the charges levelled against him. In fact, he was dismissed from the service even before he learned of the grounds for his dismissal and which fact was not successfully controverted by private respondents.

Finally, it is the contention of petitioner that the respondent Commission erred in not awarding him moral and exemplary damages despite the patent illegality of the manner employed by the private respondents in terminating his employment.

We find merit in petitioner's claim. As a rule, moral damages are recoverable only where the dismissal of the employee was attended by bad faith or fraud or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy. On the other hand, exemplary damages may be awarded only if the dismissal was effected in a wanton, oppressive or malevolent manner (*Spartan Security and Detective Agency, Inc. v. NLRC, supra*).

A thorough review of the records of the case before us reveals that bad faith attended petitioner's dismissal from respondent company. As evidenced by the records, private respondents' memorandum was issued apparently in retaliation after petitioner had lodged a complaint with respondent Commission's Arbitration Branch. That petitioner was never given a chance to explain or refute the charges levelled against him before his dismissal smacks of bad faith. Coupled with the absence of due process in effecting petitioner's dismissal, we find it reasonable to award him under the circumstances moral as well as exemplary damages (*National Service Corporation, et al. v. NLRC, 168 SCRA 122 [1988]*), the dismissal being effected in a wanton, fraudulent, oppressive and malevolent manner.

Considering the nature of petitioner's office and functions, a closer look at the alleged acts and omissions of petitioner as stated in private respondents' memorandum would justify a pronouncement that dismissal of petitioner is too harsh a penalty. Extreme caution should be exercised in terminating the services of a worker. (*Manggagawa ng Komunikasyon sa Pilipinas v. NLRC, 194 SCRA 573 [1991]*).

In view of the foregoing, we hold that petitioner is entitled to reinstatement and backwages. The reasons or grounds for dismissing the petitioner were not only too flimsy but were also not proven by private respondents. Parenthetically, no grounds were shown to make reinstatement of petitioner to his former position impossible. No evidence was presented to prove that strained relations between private respondents and petitioner exist. Where the differences of an employee with the employer are neither personal nor physical nor are they of so serious a nature, reinstatement is possible (*Employee's Association of the Philippine American Life Insurance Company v. NLRC, 199 SCRA 628 [1991]*).

WHEREFORE, the decision of respondent Commission is hereby REVERSED and SET ASIDE. Respondent Oponin Chemical Industries Philippines Corporation is hereby ordered to reinstate petitioner, without loss of seniority rights, to pay him three (3) years back wages without qualification or deduction, including the 13th

month pay and all other illegal deductions; moral damages in the amount of P25,000.00 and exemplary damages in the amount of P25,000.00 plus attorney's fees of P10,000.00. Costs against respondent.

SO ORDERED.

Feliciano, (Chairman), Davide, Jr., Romero, and Melo, JJ., concur.

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