

SUNDAY MACHINE WORKS, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND JAIME D. SANTOS, RESPONDENTS.

G.R. No. 95692. March 16, 1992

Ponente: PARAS, J.

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PARAS, J.:

Petitioner, Sunday Machine Works, Inc., through a petition for certiorari prays that the decision promulgated on October 1, 1990 issued by the National Labor Relations Commission in NCR-11-04007-87 entitled "Jaime D. Santos, Petitioner, versus Sunday Machine Works, Inc., Respondent," be set aside and a new judgment dismissing the complaint therein filed be issued.

The antecedent facts of the case are as follows:

Herein private respondent, Jaime D. Santos, was first hired on January 13, 1964 as Manager of the petitioner company in Dagupan, Pangasinan branch, one of its seven (7) branches within Luzon. Due to private respondent's meritorious service, he was promoted to the position of Assistant General Manager and later to that of Manager, assigned to the petitioner company's main branch located in Paco, Manila.

On February 3, 1987, the company's president, Sunday Pineda, confronted private respondent with the accusation, that per gathered information, he was found to be with the habit of entering into the daily cash statements the expenses of one employee by the name of Alfredo Fernando which charge, private respondent rebutted by stating that the best evidence to prove the truth of the matter was to resort to an examination of the questioned daily cash statements. As his response, Sunday Pineda ordered private respondent to go on a vacation leave together with Alfredo Fernando while he (Sunday Pineda) makes an investigation of the case. To this, private respondent stated that he better be accorded a formal investigation within the purview of the due process clause of the labor laws to which Sunday Pineda retorted: - "Salita lang yan xxx don't you worry you will receive your salaries while I am investigating the matter" - referring to his own ex--parte investigation. Private respondent was told to vacate his living quarters which vacating he did, the following day.

Private respondent was not given his salaries and was instead issued only one voucher with the amount of P566.00 which he was forced to sign 'as commission'. Some months passed by and hearing nothing from the petitioner, private respondent wrote five (5) letters inquiring as to his status vis-a-vis the company. There was no reply. Then on October 22, 1987 at around 5:50 P.M., private respondent received an antedated letter, dated March 3, 1987, stating that he was already considered dismissed from his work because of "loss of trust and confidence."

Being in the petitioner's employ for more than twenty-three (23) years and feeling that his summary dismissal was another ploy to obviate petitioner's payment of benefits to retireable employees being the company's habit, as he was already sixty (60) years of age, he filed a complaint with the Department of Labor and Employment on November 12, 1987, praying that after trial, judgment be rendered holding that his dismissal is illegal; awarding him separation pay of at least three years salary; holding respondent (herein petitioner) to pay him P200,000

moral damages; 25% of amount awarded as attorney's fees but in no case less than P20,000; and to reimburse proved litigation expenses, among others.

Complainant (herein private respondent) was then receiving P4,100 per month as salary, which he has not been receiving since the second half of February 1987 plus free room and lodging, water and electricity, all conservatively computed at P1,000 per month.

Petitioner in his position paper, put up the defense that because complainant, pursuant to his investigation as well as a rejoinder-affidavit executed by an office clerk named Danilo Tolentino, has pocketed the money as commission/rebates for customers represented in some 260 vouchers, amounting to a total of P111,875.33 his dismissal was then valid. Complainant was surprised to learn for the first time a new charge against him by the company's president.

The Arbitration Branch, National Labor Relations Commission, Department of Labor and Employment, handed down its decision on April 20, 1989, with the following dispositive portion: -

"WHEREFORE, judgment is hereby issued ordering respondent to pay the above benefits in the total amount of FORTY SEVEN THOUSAND FOUR HUNDRED PESOS (P47,400) to the complainant plus attorney's fee of ten (10%) percent."

Both parties appealed from the aforecited decision of the Labor Arbiter.

Complainant-appellant (herein private respondent) alleged as grounds the following assignment of errors:

I

The Honorable Arbiter erred in not ordering the payment of complainant's back salaries after he found complainant's dismissal illegal.

II

The Honorable Arbiter erred in computing the retirement benefits from the monetary salary of P4,100.00 a month of complainant without including the cash equivalent to P1,000.00 a month.

III

The Honorable Arbiter erred in not ordering the payment of moral damages and exemplary damages.

IV

The Honorable Arbiter erred in not ordering the payment of the 13th month pay and five (5) days incentive leave. (p. 49-50, Rollo)

Respondent-appellant (herein petitioner) did not cite the ground of its appeal and instead, raised the following issues:

Whether or not formal investigation be conducted before dismissing the complainant;

Whether or not the alleged official receipt pointed out by the complainant if there is any, should have been presented;

Whether or not there is still a need to present the customers to testify as to whether he failed to receive the discount or commission;

Whether or not complainant is entitled to the separation pay as ordered;

Whether or not respondent has a legal ground to terminate the complainant. (pp. 50-51, Rollo)

On October 11, 1990, a decision was promulgated by the Second Division of the National Labor Relations Commission with this dispositive portion:

"WHEREFORE, premises considered, judgment is hereby entered setting aside the appealed decision and another one issued: -

"1. Ordering respondent to pay complainant backwages not exceeding three (3) years from the finality of this decision based on his latest salary; and,

"2. Ordering respondent to pay complainant separation pay equivalent to one-half (1/2) month pay for every year of service based on the latest salary, a fraction of at least six (6) months equivalent to one year, plus ten (10%) percent attorney's fees of the total award.

"All other claims are dismissed for lack of merit." (p. 57, Rollo)

From this decision of the NLRC, petitioner Sunday Machine Works, Inc., immediately filed on October 29, 1992, the instant petition attacking aforesaid judgment as contrary to law and therefore charged to have been issued with "grave abuse of discretion tantamount to lack of or in excess of jurisdiction" with the following three (3) issues raised:

Whether or not the private respondent was validly dismissed under the principle of loss of trust and confidence.

Whether or not the private respondent is still entitled to separation pay if he is found to be legally dismissed;

Whether or not the private respondent is entitled to the whole 3 years back wages without deduction for the reasonable allowance/expenses for transportation, food, clothing, and shelter within a period of 3 years if he was not dismissed." (pp. 6 & 7, Rollo)

The fate of the second and the third issues raised by the petitioner will be dependent upon the outcome of the first issue - whether or not the private respondent was validly dismissed under the principle of loss of trust and confidence. Petitioner cites the case of *Riker vs. Hon. Blas Ople*, 155 SCRA 85, which is exactly the opposite of what happened in the instant case. Vincent Riker was a visiting foreigner from New York who, because of his deceptively charming ways impressed people much which led to his having been hired on a four-month-probationary employment as the general manager of the Mayon Imperial Hotel in Legaspi City. Riker was established beyond any doubt to have committed serious offenses which led to his dismissal on the ground of loss of trust and confidence. He was always drunk, even drugged at times, made requisitions of wines and other beverages for his own personal use running to several thousands of pesos, indulged in unauthorized lavish and excessive entertainment of friends and guests at the hotel's expense, spent much for family trips and his own personal trips, and was the subject of complaints of anti-Filipino behavior and activities. The dismissal of petitioner-employee Vincent Riker therefore, was clearly justified, hence, the authority of the employer to dismiss said employee on the ground of loss of trust and confidence was valid.

But that is not the case with private respondent Jaime Santos. He was found to be a model employee, had received eleven (11) certificates/plaques of merit awards from the Sunday Machine Works, Inc. (herein petitioner), known for honesty, dependability and hard work. He spent the prime years of his life helping petitioner in its business and now after more than twenty-three (23) years in the employ of petitioner and about 60 years of age already, and now deprived by his employer of his retirement pay, sorely needed in the twilight zone of his earthly stay. Since his illegal dismissal from the petitioner's employ, more than five (5) years have already passed. The already

strained relationship however, between him and the petitioner plus his advanced age now preclude his reinstatement to his former position. It is therefore only appropriate that he be given his fair and just share of what the law accords him. (*Metro Drug Corporation vs. NLRC*, 143 SCRA 132).

The case of *Reynolds Philippine Corporation vs. Genaro Eslava, et al.*, 137 SCRA 259, among numerous other cases, was also cited by petitioner. But again, the doctrine laid down here as regards the ground of loss of trust and confidence is similar to *Riker vs. Ople*: where an employee has been guilty of breach of trust or that his employer has ample reason to distrust him, a labor tribunal cannot deny to the employer the authority to dismiss the employee.

As to the main contention of the petitioner that private respondent pocketed some P111,000 as commission/rebates due their customers, NLRC, Arbitration Branch has this to say: -

"The main contention of respondent is that complainant has pocketed the amounts represented in the vouchers as pointed in Danilo Tolentino affidavit and testimony. Under existing procedures of the company, these amounts are due the customers and should be paid to them. These vouchers in turn were signed by the company officials including complainant but not by the customer. Thus, the absence of the signature of the customers on its face gives the impression that these discounts or commission were not paid to customers but are pocketed by complainant who in the beginning is given power to give discounts to the customers.

'In explaining why complainant's signature appears in the vouchers, complainant has this to say in his Rejoinder Affidavit, thus:

'1. Danilo Tolentino was not an office clerk as stated in his affidavit, but was only a re-ceiving clerk of the respondent's office at Paco Branch at the time mentioned in his affidavit;

'2. The amounts mentioned in the annexes of Tolentino's affidavit which are referred to as discounts and sometimes as discounts and commissions are actually commissions of the customers but they are denominated discounts to avoid the expanded withholding tax. This means that the customer does not want his commission to be deducted or lessened. Therefore, respondent calls them discounts in order to avoid the law;

'On the other hand if these are really discounts, they should be deducted from the amount of the job order. But this can not also be done because the customer bringing the job will not agree considering that the real customer usually as company will pay only what is stated in the receipt and therefore the representative of this company who brings this job to respondent will not receive anything.

'Hence, the representative of the customers wants to get their commission clean without any deduction, without signing anything. So what respondent did was to order the complainant or whoever gives the commission to the customer to sign the discount voucher as evidence that the commission of the customer has been given. And in all discount vouchers that were actually signed by complaint (sic) the complainant either give the said commission or said discount to the customers representative or sometimes as allowed by the company rules were spent for the entertainment of the representatives of the customer who are sometimes many. Complainant never pocketed a single centavo from this discount or commission.

'3. The respondent cannot show any official receipt issued to customers regarding the transaction or job order mentioned in the vouchers attached to Tolentino's affidavit because it is using two kinds of receipts, one set registered, and the others which are more voluminous are not registered. And these transactions mentioned in the vouchers which are big are 100% not registered or the receipts issued in payment of the job orders are fake unregistered receipts. We challenged the respondent to show otherwise. In short, the respondent is a criminal tax evader, falsify (sic) all receipts and yet has the temerity and the face to make an accusation. This practice has been initiated by respondent since 1975.'

"We have gone to examine the above, and hereby adopt the explanation to absolve complainant from the charge. Moreover, if complainant is guilty, or has committed the said acts, more convincing evidence should have been adduced by respondent - perhaps affidavits or testimony of respondent's customers who have made job orders with it and not given the discounts by complainant. Finally, the official receipts, if any, on this, as pointed by complainant should have been presented to give a more convincing picture of the case for respondent. These, therefore, and for the fact that no formal investigation was made on the complainant, we hold the dismissal as illegal in violation of the Labor Code of the Philippines." (pp. 36-38, Rollo)

The foregoing considered, the decision is clearly not issued in grave abuse of discretion, being in accordance with the law and the evidence.

WHEREFORE, the petition is DENIED and the Decision of the public respondent Commission promulgated on October 11, 1990 is hereby AFFIRMED. With costs against petitioner.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Regalado, and Nocon, JJ., concur.

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