

CHINA CITY RESTAURANT CORPORATION, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, MONICO DIETO AND JUNILITO CABLAY, RESPONDENTS.

G.R. No. 97196. January 22, 1993

Ponente: CAMPOS, JR., J.

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CAMPOS, JR., J.:

Petitioner seeks to annul the Resolution[*] of the National Labor Relations Commission (NLRC) dated November 29, 1990 in NLRC NCR AC No. 00057 (NLRC NCR CASE NO. 00-06-02857-89) entitled "Monico T. Dieto and Junilito Cablay vs. China City Restaurant" which affirmed the decision rendered by Labor Arbiter Eduardo Magno declaring the dismissal of private respondents illegal, but with the modification that instead of reinstatement private respondents be granted separation pay with full backwages.

The antecedent facts are as follows:

Petitioner China City Restaurant (petitioner, for brevity) employed private respondents Monico Dieto and Julinito Cablay (private respondents, for brevity) as chief steamer and roasting helper, respectively.

Sometime in 1988, the China City Employees Union, with Monico Dieto as President, was organized and thereafter demanded recognition from petitioner.

On October 17, 1988, Abe Fuentes, a steamer helper at petitioner's restaurant, was detained at the Makati Municipal Jail for allegedly stealing dried scallops worth two thousand pesos (P2,000.00) belonging to the petitioner. On January 20, 1989, after posting bail paid by petitioner, Abe Fuentes gave a statement at the Intelligence and Special Operations Group, SPD, implicating the private respondents.

Abe Fuentes alleged that as early as April 1988, he, in conspiracy with private respondents, had been bringing out from the restaurant dried scallops wrapped in plastic, by mixing them with leftovers thrown into the thrash can. These were sold at Ongpin, Binondo, Manila. They would then divide the proceeds among them, with the private respondents getting the lion's share. A criminal charge for qualified theft was thereafter filed against the private respondents.

On March 27, 1989, an amended information was filed to include private respondents as co-accused in the qualified theft case filed against Abe Fuentes. Later, Abe Fuentes turned state witness.

On May 22, 1989, petitioner, through a memorandum, terminated the services of the private respondents on the ground of loss of trust and confidence.

Thereafter a complaint for illegal dismissal was filed by the private respondents against the petitioner with the Department of Labor and Employment.

Private respondents professed ignorance of the crime exposed by Abe Fuentes. They claimed that when they visited Abe Fuentes at his detention cell, the latter allegedly told them that Jose Polotan, the restaurant

administrator, was forcing him to name the private respondents as his co--conspirators but that he allegedly refused. Later, however, private respondents were surprised to learn that Abe Fuentes was released on bail at the instance of the petitioner. They vigorously claimed that they were implicated in the theft incident because of their being union members.

On January 17, 1990, after investigation and submission by the parties of their respective evidence and position papers, the Labor Arbiter promulgated his decision, the dispositive portion of which is quoted hereunder as follows:

"Wherefore, judgment is hereby rendered declaring the dismissal of the complainants as illegal. Respondent is hereby ordered to immediately reinstate complainants to their former positions without loss of seniority rights with full backwages from May 20, 1989 until reinstatement plus attorney's fees equivalent to 10% of the amount recoverable by the complainants.

The claim for moral and exemplary damages are (sic) hereby dismissed for lack of factual and legal basis.

SO ORDERED."[1]

Dissatisfied with the decision, petitioner appealed to the NLRC.

In its Resolution dated November 29, 1990, the NLRC affirmed the decision of the Labor Arbiter with the modification of granting private respondents the alternative relief of separation pay plus backwages instead of reinstatement.

Petitioner filed a motion for reconsideration of the NLRC resolution on January 4, 1991, but the same was denied on January 22, 1991.[2]

Hence, this petition.

The grounds relied upon by the petitioner for the issuance of the writ are the following:

"1

THE RESPONDENT COMMISSION ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN HOLDING THAT THE PETITIONER FAILED TO OBSERVE DUE PROCESS IN DISMISSING THE PRIVATE RESPONDENTS WHEN, IN TRUTH AND IN FACT, AND AS ENUNCIATED IN *BLTBCo vs. NLRC*, 166 SCRA 721, THEY WERE FULLY ACCORDED THEIR RIGHT TO DUE PROCESS OF LAW BECAUSE THEIR DISMISSAL WAS EFFECTED ON THE BASIS OF THE PRELIMINARY INVESTIGATION FINDINGS OF THE CITY FISCAL WHICH FOUND THEM TO BE CO--CONSPIRATORS IN THE CRIME OF QUALIFIED THEFT.

2

THE RESPONDENT COMMISSION ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN DECLARING THE DISMISSAL OF PRIVATE RESPONDENTS ILLEGAL ON THE PREMISE THAT THEY WERE NOT ACCORDED DUE PROCESS AND IN CONSEQUENTLY AWARDING THE UNDULY HARSH RELIEF OF SEPARATION PAY WITH BACKWAGES IN COMPLETE DISREGARD OF THE CASE OF *WENPHIL CORPORATION vs. NLRC*, 170 SCRA 69, WHICH MERELY GRANTED A P1,000.00 SANCTION TO AN EMPLOYEE DISMISSED WITHOUT DUE PROCESS."[3]

Meanwhile, on March 25, 1991, private respondents were acquitted by the Regional Trial Court of the charge of qualified theft on the ground of reasonable doubt.[4]

The issue in this petition is whether or not public respondent committed grave abuse of discretion in holding the dismissal of private respondents illegal for lack of due process of the law, and in ordering petitioner to pay them

separation pay plus backwages.

It is the petitioner's contention that the preliminary investigation conducted by the City Fiscal on the qualified theft charge against private respondents was sufficient compliance with the due process requirement of the law. Invoking *Batangas Laguna Tayabas Bus Co. (BLTBCo.) vs. NLRC*,^[5] it contends that an employee can be dismissed on the basis of the findings of the City Fiscal during the preliminary investigation of the criminal complaint. Petitioner claims that in such case due process does not require the employer to conduct a separate investigation as this would only be a duplication of the City Fiscal's investigation upon which the employer has a right to rely on.^[6]

The NLRC maintains otherwise, stating that they were not afforded the formal investigation required and that the fiscal's investigation could not legally take its place.^[7]

Due process of law simply means giving opportunity to be heard before judgment is rendered. "Due process of law is a law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial".^[8] In fact, this Court has held that there is no violation of due process even if no hearing was conducted, where the party was given a chance to explain his side of the controversy. What is frowned upon is the denial of the opportunity to be heard.^[9] As a general rule, the preliminary investigation conducted by the City Fiscal is sufficient compliance with procedural due process because the accused is given ample opportunity to be heard.

As stated in the *BLTBCo* case:^[10]

"xxx the criminal charges initiated by the company against private respondents and the finding after preliminary investigation of prima facie guilt of the offense charged constitute substantial evidence sufficient to warrant a finding by the Labor Tribunal of the existence of a just cause for their termination based on loss of trust and confidence. x x x

xxx For the company to conduct its own investigation would only be a duplication of the JAGO's and later, the city fiscal's investigation, xxx said officials being the persons charged with this special function."

However, the petitioner cannot seek refuge in the *BLTBCo* case to support its petition. As correctly observed by the Solicitor General, in that case there was mass fraud covering a period of ten months involving thirty-six (36) employees and volumes of documentary evidence. The City Fiscal's finding of a prima facie case of estafa against the employees was based on the affidavits of witnesses and on the voluminous documentary evidence. There was, therefore, basis for the company to dismiss the employees for loss of confidence without necessarily conducting a formal investigation separate from the preliminary investigation.^[11]

In the present case, however, the fiscal's finding of prima facie case of qualified theft against private respondents was based solely on the affidavit executed by the original accused-turned state witness, Abe Fuentes, to the effect that he conspired with the private respondents in the theft of the dried scallops. The only connection of the private respondents to the charge is the implication made by Abe Fuentes. It is therefore necessary to scrutinize this implication. The Regional Trial Court which acquitted the private respondents of the crime of qualified theft doubted the veracity of Abe Fuentes' testimony against them because: (a) the implication was made more than three (3) months after Abe Fuentes' arrest and after a series of talks with petitioner's representatives; (b) the bond for his (Abe Fuentes') temporary release was put up by petitioner upon his assurance that he would cooperate with petitioner; (c) the implicatory testimony of Abe Fuentes was not substantiated by some other evidence, thus rendering it of no probative value; (d) the private respondents are officers of the union with whom petitioner is at odds.^[12]

Aside from Abe Fuentes' affidavit and the criminal complaint/information, there is no other evidence shown by

petitioner positively linking private respondents to the alleged theft committed.

Due process in administrative proceedings requires that "evidence must be substantial, and substantial evidence means evidence that a reasonable mind might accept as adequate to support a conclusion".[13]

The information for qualified theft, based solely on the affidavit of Abe Fuentes, implicating the private respondents is not the substantial evidence which a reasonable mind would accept as sufficient to conclude that private respondents are not trustworthy, and thus can be legally dismissed for loss of trust. Moreover, the circumstances found by the trial court as leading to Abe Fuentes' implication of the private respondents tend to show that the basis for the latter's dismissal was not petitioner's loss of trust and confidence but rather its retaliation against them for their union activities.

Furthermore, even the Labor Arbiter found that "A close scrutiny of the facts and evidences attached to the record will reveal that the implication of the complainants by Abe Fuentes in the commission of the crime of qualified theft is not enough basis for the respondent to terminate them. x x x Since they failed to establish sufficient basis for concluding that the complainants were really in connivance with Abe Fuentes in the commission of the qualified theft, the dismissal becomes illegal".[14]

The findings of the lower court in the theft case and the decision of the Labor Arbiter that no sufficient basis exists to justify a dismissal on the ground of loss of confidence deserves Our consideration. The factual findings of the lower court and the Labor Arbiter with respect to this point are conclusive upon this Court.

Although the BLTBCo. case held that the preliminary investigation is sufficient compliance with due process without needing separate formal investigation to be conducted by the company for dismissal of erring employees, We do not find the ruling in said case as all embracing because as held in *San Miguel Corporation vs. NLRC*,[15] the requirements for due process are two-fold; and We quote:

"Under the Labor Code, as amended, the requirements for the lawful dismissal of an employee by his employer are two-fold: the substantive and the procedural. Not only must the dismissal be for a valid or authorized cause as provided by law [Arts. 279, 281, 282-284], but the rudimentary requirements of due process--notice and hearing--must also be observed before an employee may be dismissed [Art. 277(b)]. One cannot go without the other, for otherwise the termination would, in the eyes of the law, be illegal."

In this case, there is no sufficient basis to support the belief that a just and lawful cause exists. The just and lawful cause constitutes the substantive aspect of due process. Lack of just causes render the dismissal illegal.

In a long line of cases, this Court stressed that the right of an employer to dismiss employees on the ground that it has lost its trust and confidence in them must not be exercised arbitrarily and without just cause; that although the dropping of a criminal prosecution for an employee's alleged misconduct does not bar his dismissal and proof beyond reasonable doubt is not necessary to justify the same, still the basis thereof must be clearly and convincingly established.[16] Although the power to dismiss is a normal prerogative of the employer, the same is not without limitations. The right of the employer must not be exercised arbitrarily and without just cause. Otherwise, the constitutional mandate of security of tenure of the workers would be rendered nugatory.[17]

In *General Bank and Trust Co. vs. Court of Appeals*,[18] this Court set forth the guidelines for the doctrine of loss of confidence to apply, to wit:

"x x x However, loss of confidence should not be simulated. It should not be used as a subterfuge for causes which are improper, illegal, or unjustified. Loss of confidence may not be arbitrarily asserted in the face of overwhelming evidence to the contrary. It must be genuine, not a mere afterthought to justify earlier action taken in bad faith."

In this case, the only basis for charging the private respondents with qualified theft is the affidavit of Abe Fuentes implicating them. There is no other evidence on record to support or show any connection of the private respondents to the charge of qualified theft. As found by the trial court, Abe Fuentes implicated the private respondents only after a series of conferences with petitioner's representatives, and after petitioner facilitated his release from jail through the former's answering for his bail bond.

For loss of trust and confidence to be a valid ground for the dismissal of employees, it must be substantial and not arbitrary, whimsical, capricious or concocted.

Irregularities or malpractices should not be allowed to escape the scrutiny of this Court. Solicitude for the protection of the rights of the working class are of prime importance. Although this is not license to disregard the rights of management, still the Court must be wary of the ploys of management to get rid of employees it considers as undesirable.

Petitioner goes on to contend that even if private respondents were dismissed without due process the award of separation pay with backwages is unduly harsh. It cites the case of *Wenphil*,^[19] where an indemnity of only P1,000.00 was awarded to the private respondent as compensation for the failure of petitioner to give formal notice and to conduct investigation. We find the *Wenphil* case not applicable to the case at bar because in the former case (*Wenphil* case) the company was able to conclusively show that the dismissed employee was guilty of grave misconduct and insubordination which We do not find in this case.

Employees who are illegally dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to their full backwages.^[20]

However, when reinstatement to their former positions is not possible under the circumstances, an award equivalent to three years backwages plus separation pay to compensate for their illegal separation is thus proper.^[21]

The circumstances prevailing in this case do not warrant the reinstatement of the illegally dismissed private respondents. Antagonism and imputations of bad faith caused a severe strain in the relationship between petitioner and private respondents, that a more equitable disposition would be an award of separation pay, in lieu of reinstatement, plus backwages for not more than three years without qualification and deduction.

IN VIEW OF THE FOREGOING, the petition is DISMISSED. The Resolution of the National Labor Relations Commission dated November 29, 1990 is hereby AFFIRMED in toto with the modification that the amount of backwages be reckoned from the actual date of dismissal up to the date of this decision which in no case should exceed three (3) years. With costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Feliciano, Regalado, and Nocon, JJ., concur.

[*] Penned by Presiding Commissioner Edna Bonto-Perez and concurred in by Commissioner Domingo H. Zapanta and Rustico L. Diokno.

[1] Rollo, pp. 32-33.

[2] Rollo, p. 53.

[3] Rollo, p. 9.

[4] RTC Decision, p. 2; Rollo, p. 114.

[5] 166 SCRA 721 (1988).

- [6] Rollo, p. 10.
- [7] Rollo, p. 25.
- [8] Wenphil Corporation vs. NLRC, 170 SCRA 69 (1989).
- [9] Philippine Airlines, Inc. vs. NLRC, 198 SCRA 748 (1991).
- [10] Supra, note 5 at pp. 726-727.
- [11] Rollo, p. 129.
- [12] Rollo, p. 114.
- [13] Associated Labor Union vs. NLRC, 189 SCRA 743 (1990).
- [14] Rollo, p. 32.

[15] 173 SCRA 314 (1989).

- [16] Starlite Plastic Industrial Corp. vs. NLRC, 171 SCRA 315 (1989).
- [17] Llosa-Tan vs. Silahis International Hotel, 181 SCRA 738 (1990).

[18] 135 SCRA 569, 578 (1985).

- [19] Supra, note 8.
- [20] LABOR CODE OF THE PHILIPPINES, Book 6, Title 1, Article 279.
- [21] Torillo vs. Leogardo, Jr., 197 SCRA 471 (1991) citing Sy Chie Junk Shop vs. Federacion Obrera de la Industria y Otros Trabajadores De Filipinas (FOITAF), 161 SCRA 143 (1988) also cited in St. Louis College of Tuguegarao vs. NLRC, 177 SCRA 151 (1989).

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