

RADIO COMMUNICATIONS OF THE PHILIPPINES, INC. (RCPI), PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND ELEANOR BARREDO, RESPONDENTS.

G.R. No. 98242. May 12, 1993

Ponente: GRIÑO–AQUINO, J.

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GRIÑO–AQUINO, J.:

The petitioner, Radio Communications of the Philippines, Inc. (RCPI, for brevity), seeks to reverse: (1) the decision of the Fourth Division, National Labor Relations Commission (NLRC, for brevity) in NLRC-RAB-VI--06-04-50060-88 dated January 24, 1991 which affirmed with modification the decision of Labor Arbiter Danilo C. Acosta; and (2) the resolution dated March 14, 1991 denying RCPI's motion for reconsideration of said decision.

RCPI is a firm engaged in telecommunications business. Since July 19, 1979 the private respondent, Eleanor D. Barredo, had been employed as Accounting Clerk at the RCPI branch office in Roxas City since July 19, 1979. In June 1983, she was extended a permanent appointment.

On July 27, 1987, private respondent applied for sick leave of absence duly supported by a medical certificate. Having been advised by her attending physician to rest for a period of from four to five months, she requested an extension of her sick leave of absence on October 26, 1987.

On December 12, 1987, she received a letter from Reynaldo Alovera, Net Control Manager of RCPI, instructing her to report for duty. In reply, she explained that she could not as yet report for duty because her physician found her not yet fit to resume working.

RCPI reiterated its order requiring her to report for work. When she failed to comply, her employment was terminated on February 11, 1988.

In its position paper, RCPI claimed that Barredo's dismissal was for a valid cause. Since the two (2) medical certificates submitted by her in support of her application for sick leave appeared to have been written by two (2) different persons, the petitioner required her to report for work to enable the company physician to check and examine her. Furthermore, the company physician who was consulted regarding Barredo's alleged ailment opined that the latter's "length of absence due to allergic dermatitis is not in any medical knowledge compatible (sic)" (p.112, Rollo).

Petitioner gave Barredo three (3) chances to report and submit herself for medical examination, but she did not comply. Her conduct was considered by petitioner "reprehensible and constitute serious misconduct and/or willful disobedience to lawful orders of her superior as will warrant her termination." (p. 113, Rollo.)

On January 15, 1990, Labor Arbiter Danilo C. Acosta rendered a Decision finding private respondent's dismissal illegal and held as follows:

"Respondent advances the view that the complainant was given three (3) chances to report and submit herself for physical examination by the respondent's physician but complainant refused to obey the lawful orders of her superior. This allegation of the respondent could not be given much weight for evidently, the two orders of the respondent are inconsistent for how could an employee report back to work only to be subjected to another physical examination.

"In the matter of the medical examination of the complainant respondent should have required complainant to submit herself for examination before a competent public health physician and not before the Company's physician whose findings maybe tainted with certain bias and prejudice. The complainant, in this regard, had also been remiss but we certainly cannot fault her for she may not be aware of the legal implication. Because of the foregoing, the complainant could not have been guilty of insubordination.

"It would then seem inconceivable that an employee would fake illness in order not to report for work only later on to demand reinstatement from her employer. In view of the foregoing and in order to give meaning to the constitutional and legal provisions on security of tenure of workers, this office finds the dismissal of the herein complainant as illegal.

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"WHEREFORE, respondents are hereby ordered to pay complainant the amount of P49,834.85 representing her backwages and 13th month pay as of January 15, 1990 the date of this decision and pursuant to the implementing rules and regulations of Republic Act 6715, to immediately reinstate the complainant under the same terms and conditions prevailing prior to her dismissal." (pp. 85-86, Rollo.)

RCPI appealed to the NLRC arguing that the dismissal of Barredo should be sustained on the ground of illness which incapacitated her for a period of more than six (6) months. It questioned the award of backwages and 13th month pay as unjust and unfair because Barredo who was absent due to illness did not render any work.

In its Decision promulgated on January 24, 1991, public respondent affirmed the decision of the Labor Arbiter. In sustaining the Labor Arbiter's finding of illegal dismissal, public respondent rationalized as follows:

"Since this appeal raises only the issue of whether or not disease as a ground for termination under Article 284 of the Labor Code is applicable in this case, we shall confine our disposition of this appeal on this point.

"At the outset, we cannot understand why respondent seek to justify the dismissal of the complainant [Barredo] under Article 284 when the notice of dismissal they sent to complainant does not even mention disease as one of the grounds for dismissal. The validity of the dismissal of complainant must be determined on the basis of the grounds relied upon by respondent in the notice of dismissal. In view of this fact any discussion on the applicability of Article 284 is pointless and irrelevant to the case at bar.

"Moreover, the decision appealed from did not even mention Article 284; and rightly so, because this was never an issue in the sense that it was not among the ground for dismissal.

"Respondents should know that we do not deal with hypothetical cases. It is immaterial and irrelevant that respondents could have used Article 284 to terminate the employment of complainant. The fact is that they did not dismiss complainant on this ground. Thus, there is no point in defending their actions on this ground.

"As to the award for backwages and 13th month pay, the computation is even favorable to respondents because the same as (sic) limited to the period from April 12, 1988 to January 15, 1990 when the proper limitation should be that the same shall not exceed three (3) years. However, since the complainant did not appeal said award, we shall simply sustain the same. Besides, complainant also had shortcomings in this case.

"As to the feasibility of reinstatement, the Labor Arbiter is directed to determine the feasibility thereof. If in his determination, supervening circumstances have rendered the same impractical or the same is no longer feasible then in lieu thereof the appropriate separation pay, in addition to backwages, in an amount equivalent to one (1) month's pay for every year of service shall be paid to the complainant. In the computation of the length of service for purposes of separation pay, an additional three (3) years counted from the date of dismissal shall be considered. In this case, however, we shall limit the length of service to eight (8) years.

"WHEREFORE, in view of all the foregoing, the decision appealed from is AFFIRMED subject to the MODIFICATION that in the event reinstatement is no longer feasible or has become impractical as determined by the Labor Arbiter, in lieu thereof, and in addition to the award of backwages, respondent shall pay the separation pay of complainant in an amount equivalent to one (1) month's pay for every year of service for eight (8) years as hereinbefore discussed." (pp. 20-23, Rollo.)

A motion for reconsideration was filed which was likewise denied as follows:

"WHEREFORE, in view of all the foregoing, this motion for reconsideration is hereby denied.

"No further motion for reconsideration shall be entertained." (p. 26, Rollo.)

In this petition for certiorari, RCPI contends that respondent NLRC acted with grave abuse of discretion amounting to lack of jurisdiction in ordering it to "reinstate (with backwages) private respondent [BARREDO] when the latter clearly disobeyed lawful orders to report to the office for physical examination and committed an act of insubordination when she re-refused to report despite three [3] notices." (p. 5, Petition)

The petition is without merit.

The resolution of the instant case hinges on the determination of whether or not the RCPI had complied with the procedural requirements before it dismissed private respondent Barredo.

The pertinent provisions of the Omnibus Rules Implementing the Labor Code mandate, to wit:

Sec. 1. Security of tenure and due process. No worker shall be dismissed except for a just or authorized cause provided by law and after due process.

Sec. 2. Notice of dismissal. Any employer who seeks to dismiss a worker shall furnish him a written notice stating the particular acts or omission constituting the grounds for his dismissal. In cases of abandonment of work, the notice shall be served at the worker's last known address.

Sec. 5. Answer and hearing. The worker may answer the allegations stated against him in the notice of dismissal within a reasonable period from receipt of such notice. The employer shall afford the worker ample opportunity to be heard and to defend himself with the assistance of his representative, if he so desires.

Sec. 6. Decision to dismiss. The employer shall immediately notify a worker in writing of a decision to dismiss him stating clearly the reasons therefor. (Rule XIV, Book V, Rules and Regulations Implementing the Labor Code; Emphasis Supplied.)

These guidelines mandate that the employer should send the employee two (2) written notices of dismissal before a termination of employment can be legally effected. These are: (1) the notice which apprises the employee of the particular acts or omissions for which his dismissal is sought, and (2) the subsequent notice which informs the employee of the employer's decision to dismiss him. (National Service Corporation vs. NLRC, 168 SCRA 122).

In the case at bar, RCPI did not comply with the above-stated guidelines in effecting Barredo's dismissal. Barredo was never apprised nor given the chance to explain the charges filed against her. The three (3) notices

sent to Barredo to report for work and submit herself for physical examination by RCPI's physician did not constitute "in itself opportunity to be heard." (p. 120, Rollo).

And as the Solicitor General noted:

"Furthermore, it is important to point out that for the first time on appeal, petitioner sought to justify the dismissal of private respondent on the ground of illness under Art. 284 of the Labor Code. However, it is to be noted that the notice of dismissal is bereft of any indication that private respondent was being terminated on that ground. As a result, public respondent was constrained to consider discussion on the applicability of Art. 284 as 'pointless and irrelevant to the case at bar.' " (p. 121, Rollo).

While the court recognizes the employer's prerogatives to instill discipline in his employees and to impose reasonable penalties, including dismissal, on erring employees pursuant to company rules and regulations (*Soco vs. Mercantile Corporation of Davao*, 148 SCRA 526), it should be emphasized that due process must be observed in effecting an employee's dismissal because the dismissal of an employee affects not only his position but also his means of livelihood and his dependents' sustenance. Thus, strict adherence to the requirements set forth in the Labor Code, as amended, is essential.

No grave abuse of discretion is attributable to the NLRC for holding that Barredo was illegally terminated and ordering her reinstatement, or in lieu thereof, the payment of separation pay, in addition to the award of backwages.

ACCORDINGLY, the petition is DISMISSED. The decision of respondent National Labor Relations Commission dated January 24, 1991 is AFFIRMED.

SO ORDERED.

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

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