

COCOLAND DEVELOPMENT CORPORATION, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND JEREMIAS MAGO, RESPONDENTS.

G.R. No. 98458. July 17, 1996

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Should an employer's determination of a certain "technology" as trade secret be considered binding and conclusive upon the National Labor Relations Commission? Does the alleged violation of confidentiality of the employer's "technology" constitute just cause for termination of the erring employee? These queries are resolved in the instant petition assailing and seeking to annul two Resolutions dated January 15, 1991 and March 21, 1991 of public respondent National Labor Relations Commission,[1] in NLRC Case No. RAB 09-03-00073-89 entitled "Jeremias Mago vs. Cocoland Development Corporation and/or Alfredo C. De la Cruz." The first Resolution[2] sustained the Decision dated October 25, 1989 of Labor Arbiter Harun B. Ismael insofar as it declared private respondent's dismissal by petitioner illegal, but modified the Decision by ordering private respondent's reinstatement along with payment of backwages, and if reinstatement be impractical on account of strained relations, then payment of separation pay plus, in any event, moral and exemplary damages and attorney's fees. At the same time, said Resolution dismissed petitioner's appeal for lack of merit. On the other hand, the second Resolution[3] denied petitioner's motion for reconsideration of the first Resolution.

The Antecedent Facts

In the early part of 1980, petitioner corporation, which was engaged in the production of coffee, coconut, cacao and black pepper at its plantation in Lamitan, Basilan, hired private respondent, an agriculturist by profession, as Field Supervisor. His work "consisted of servicing the agricultural needs of respondent" company at its plantation. He was compensated for days actually worked, and was off-duty Sundays, rest days and holidays.

Sometime in January 1989, petitioner corporation came to know that private respondent was engaged in extending technical services and advice to small farmers without prior clearance from management. On account thereof, the company, through its vice president for operations, Alfredo C. de la Cruz, issued a memorandum dated January 12, 1989, charging private respondent with reportedly imparting company technology in coffee propagation techniques by "rendering professional services to outside parties without the knowledge/consent of the management", and in violation of its policy against unauthorized disclosure of trade secrets, which violation was allegedly a ground for termination of his services with the company. Private respondent was further advised to immediately refrain from such consultancy activities.

In his letter-reply of January 14, 1989, private respondent stated that the report against him was only partly true. He admitted that he accepted the invitations of small farm owners and gave outside consultancy services at their farms in order to uplift his standard of living and that of his men through receipt of voluntary remuneration from these farm owners. However, he denied having violated petitioner's policy against unauthorized disclosure of its

trade secret, claiming that its technology on coffee propagation techniques was no longer a secret as the same had been learned and applied by outside parties or small farm owners since 1986, and he was not the first one to provide outside consultancy services to such third parties, as this practice was earlier started by petitioner's manager, Edgardo M. Seña.

Private respondent further contended that in 1988, a majority of the petitioner corporation's staff, including private respondent and his men, had refused to sign a proposed memorandum of agreement for protecting the company's "Confidentiality of Technology", because the alleged technology was already known to outsiders. Private respondent also asserted that he did not have to ask anyone's permission because he and his men already knew the different techniques in the propagation and maintenance of different crops even before they were hired by petitioner corporation; that he was not responsible for divulging the said technology to outsiders; and that he and his men used their rest days (Sunday) in engaging in their outside consultancy activities.

In his letter of January 26, 1989, Alfredo de la Cruz refuted private respondent's assertions, stating that Edgardo Seña had been authorized to provide technical assistance to small farm owners as part of petitioner's "after sales service or part of the package when these farmers bought seeds and planting materials" from petitioner, and that Seña never received any outside compensation for his services. Moreover, de la Cruz emphasized that private respondent was still bound to keep confidential the petitioner's technologies which he had access to, notwithstanding the absence of any signed agreement to that effect.

De la Cruz further averred that, while private respondent and some of his men "knew propagation techniques before they joined" the company, nevertheless private respondent cannot deny that the particular "coffee propagation cuttings techniques" were developed by FILIPRO, and private respondent was able to learn said technique because he was sent for training in Bukidnon and subsequently trained by the company.

It appears that de la Cruz interpreted private respondent's explanations in his letter as a refusal to comply with petitioner's policy, so in his letter of February 12, 1989, the former directed the latter "to explain in writing within 48 hours why the company should not terminate (his) services for cause."

On February 14, 1989, private respondent complied with de la Cruz' order and submitted his explanation. Obviously dissatisfied, de la Cruz on the same date advised private respondent that his explanations were "not admissible to management" and "(e)ffective March 14, 1989, Management x x x (will) terminate your services for loss of trust and confidence."

Private respondent filed on March 17, 1989 a complaint against petitioner and/or Alfredo C. de la Cruz for illegal dismissal with damages, with the Department of Labor and Employment, Arbitration Branch No. 14, Zamboanga City. After hearing on the merits, Labor Arbiter Harun B. Ismael rendered his Decision on October 25, 1989, finding the dismissal "tainted with illegality." The dispositive portion[4] of the Decision reads:

"WHEREFORE, premises considered, judgment is hereby rendered declaring complainant's dismissal illegal. Complainant, in lieu of reinstatement, is awarded separation pay in the amount of Fifteen Thousand Six Hundred Pesos (P15,600.00); backwages of Thirty-One Thousand Two Hundred Pesos (P31,200.00); and attorney's fees of Two Thousand Three Hundred Forty Pesos (P2,340.00).

All other claims are dismissed for lack of merit.

SO ORDERED."

On November 13 and 14, 1989, petitioner and private respondent, respectively, appealed said decision to public respondent, which thereafter issued the two (2) assailed Resolutions; hence, this petition.

Issues

The petition charges respondent NLRC with grave abuse of discretion for --

"x x x declaring that complainant Mago (private respondent) was illegally dismissed when the 'evidence clearly show that complainant was "moonlighting" or rendering services to outside parties(.) (thereby) imparting technology acquired from his employment with the company" and

"x x x awarding moral and exemplary damages when the evidence extant shows that the company did not act in bad faith, wanton or fraudulent or reckless manner, or that the labor arbiter below did not find that the company acted in a manner by which damages may be awarded."[5]

Anent the first ground, petitioner argues that private respondent's dismissal was legal because it was warranted by the evidence on record. Petitioner calls attention to the fact that private respondent admitted providing consultancy services to small farmers and others in return for which he received payment, which allegedly constitutes "moonlighting". Petitioner rejects public respondent's finding that its coffee propagation techniques can no longer be considered a trade secret because private respondent sufficiently established by means of government published leaflets and brochures that the techniques are already freely available to the public. Petitioner asserts that the determination as to whether or not a certain technology is a trade secret rests solely upon it, and that the government publications presented by private respondent merely confirmed his "moonlighting" activity, since he charged small farm owners fees for techniques already available from government publications. Further, petitioner refutes public respondent's finding that private respondent's dismissal was arbitrary for lack of a prior formal hearing; petitioner insists there was no need for a formal hearing on the charge against private respondent because he had already been duly afforded opportunity to explain and defend himself in writing.

On the second ground, petitioner assails respondent Commission's award of moral and exemplary damages to private respondent, contending that the latter's dismissal was neither tainted with bad faith nor carried out in a wanton, fraudulent, or oppressive manner.

This Court's Ruling

We find no abuse of discretion on the part of respondent Commission in its affirmance of the arbiter's findings, which are amply supported by the evidence on record. However, we modify the assailed Resolutions by deleting the award of moral and exemplary damages along with attorney's fees.

The first ground relied upon by petitioner essentially involves determining whether or not there existed a valid company policy prohibiting disclosure by employees of company technology and trade secrets to "outsiders", and whether or not private respondent's actions amounted to a violation of such policy sufficient to warrant dismissal.

The record fully supports the findings and conclusions of the arbiter that petitioner "failed to demonstrate with clear and convincing evidence the alleged company policy which it claimed was violated by the complainant (private respondent)," and that in any event, even assuming that there was such company policy prohibiting its employees from transferring technological knowledge to third parties, the so-called technology was hardly a 'trade secret' since private respondent had established convincingly via competent evidence that the various propagation techniques claimed by petitioner as its trade secret were readily available to the public.

It is axiomatic that findings of facts made by labor arbiters and affirmed by the National Labor Relations Commission are entitled to great respect and even finality, and are considered binding on this Court.[6]

Who determines what is trade secret?

Petitioner's naked contention that its own determination of what constitutes a trade secret should be binding and conclusive upon public respondent is erroneous and dangerous, and deserves the barest consideration. As prudently observed by the Solicitor General, such a stand is contrary to the State's policy of affording protection to labor. Sustaining such contention would permit an employer to label almost anything a trade secret, and thereby

create a weapon with which he/it may arbitrarily dismiss an employee on the pre-text that the latter somehow disclosed a trade secret, even if in fact there be none at all to speak of. Any determination by management as to the confidential nature of technologies, processes, formulae or other so-called trade secrets must have a substantial factual basis which can pass judicial scrutiny. This is but an ineludible corollary of the time-tested principle that "(t)he rules, instructions or commands in order to be a ground for discharge on the score of disobedience, must be reasonable and lawful, must be known to the employee, and must pertain to the duties which the employees have been engaged to discharge." [7] A fictitious or non-existent "secret" (or a publicly known one as in the instant case) can in no wise be the basis of a reasonable and lawful rule or company policy regarding confidentiality.

Had petitioner successfully established by competent evidence the existence of such company policy as well as the confidential nature of its technology, perhaps things might have turned out differently. But inasmuch as petitioner failed utterly on both counts, it follows that there was no basis at all for private respondent's dismissal on the ground of either disobedience or loss of trust and confidence. The petitioner's failure to prove violation of the policy necessarily means that private respondent's dismissal was not justified. [8] It is doctrinal that in an unlawful dismissal case, the employer has the burden of proving the lawful cause for the employee's dismissal. [9] To warrant dismissal for loss of trust and confidence there should naturally be some basis therefor. [10] Unsupported by sufficient proof, "loss of confidence" is without basis and may not be successfully invoked as a ground for dismissal.

Further, petitioner's failure to give private respondent the benefit of a hearing and an investigation before his termination constitutes an infringement of his right to due process of law. [11]

It is an established rule of long standing that, to effect a completely valid and unassailable dismissal, an employer must show not only sufficient ground therefor but must also prove that procedural due process had been observed by giving the employee two notices: one, of the intention to dismiss, indicating therein his acts or omissions complained against, and two, notice of the decision to dismiss; and an opportunity to answer and rebut the charges against him, in between such notices.

"The twin requirements of notice and hearing constitute essential elements of due process in cases of employee dismissal: the requirement of notice is intended to inform the employee concerned of the employer's intent to dismiss and the reason for the proposed dismissal; upon the other hand, the requirement of hearing affords the employee an opportunity to answer his employer's charges against him accordingly to defend himself therefrom before dismissal is effected. Neither of these two requirements can be dispensed with without running afoul of the due process requirement of the 1987 Constitution." [12]

"There is also no showing that the requirements of due process were adequately met by the petitioners.

"The law requires that the employer must furnish the worker sought to be dismissed with two (2) written notices before termination of employment can be legally effected: (1) 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. (Sec. 13, BP 130; Sec. 2-6 Rule XIV, Book V, Rules and Regulations Implementing the Labor Code as amended). Failure to comply with the requirements taints the dismissal with illegality. This procedure is mandatory; in the absence of which, any judgment reached by management is void and inexistent (Tingson, Jr. v. NLRC, 185 SCRA 498 [1990]; National Service Corp. v. NLRC, 168 SCRA 122 [1988]; Ruffy v. NLRC, 182 SCRA 365 [1990])." [13]

Petitioner's contention that there was no need to conduct a formal hearing before dismissing private respondent because he was afforded the opportunity to explain and defend himself in writing, is facile and likewise erroneous, not to mention misleading. As observed by the Solicitor General, the opportunity granted to private

respondent was to explain his side regarding the report against him. At that time, there was yet no charge filed by petitioner against private respondent. It was only when private respondent articulated his views against petitioner's alleged policy on the secrecy of its technology that it decided to require him to explain why the company should not terminate his services for cause. Private respondent was not afforded the chance to be informed of the details constituting his alleged violation. Moreover, petitioner did not even present any evidence to prove its allegations against private respondent. On the contrary, it was private respondent who before the public respondent duly established that the purported secret propagation technique was no longer secret as it had attained wide currency via government publications. Unarguable it is that the act of dismissing an employee without first conducting a formal investigation is arbitrary and unwarranted,[14] as it affects one's person and property.

Moral and Exemplary Damages

In defending the assailed Resolutions, private respondent argued that the law on moral damages, contained in Article 2217 of the Civil Code, provides that "moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission." While the foregoing discussion clearly shows that private respondent was wrongfully dismissed by petitioner without valid cause, this does not automatically mean that petitioner is liable to private respondent for moral or other damages.

In *Primero vs. Intermediate Appellate Court*,[15] this Court held that "x x x an award (of moral damages) cannot be justified solely upon the premise (otherwise sufficient for redress under the Labor Code) that the employer fired his employee without just cause or due process. Additional facts must be pleaded and proven to warrant the grant of moral damages under the Civil Code, these being, to repeat, that the act of dismissal was attended by bad faith or fraud, or was oppressive to labor, or done in a manner contrary to morals, good customs, or public policy; and of course, that social humiliation, wounded feelings, grave anxiety, etc., resulted therefrom." [16] This was reiterated in *Garcia vs. NLRC*,[17] where the Court added that exemplary damages may be awarded only if the dismissal was shown to have been effected in a wanton, oppressive or malevolent manner.[18]

This the private respondent failed to do. Because no evidence was adduced to show that petitioner company acted in bad faith or in a wanton or fraudulent manner in dismissing the private respondent, the labor arbiter did not award any moral and exemplary damages in his decision. Respondent NLRC therefore had no factual or legal basis to award such damages in the exercise of its appellate jurisdiction. However, the Court sustains the award of attorney's fees equivalent to five percent (5%) of the total monetary award as authorized by the Labor Code.

WHEREFORE, premises considered, the assailed Resolutions are herewith **AFFIRMED**, except that the award of moral and exemplary damages are hereby deleted for lack of factual and legal basis.

SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr. Melo, and Francisco, JJ., concur.

[1] Fifth Division, composed of Pres. Comm. Musib M. Buat, ponente, and Comms. Oscar N. Abella (on leave) and Leon G. Gonzaga, Jr.

[2] Rollo, pp. 24 to 37.

[3] Rollo, pp. 38-40.

[4] Decision, pp. 8-9; rollo, pp. 56-57.

[5] Petition, pp. 9-10; rollo, pp. 10-11; underscoring in the original text.

[6] Cf. *Associated Labor Unions-TUCP vs. NLRC*, 235 SCRA 395 (August 16, 1994); *Association of Marine Officers and Seamen of Reyes and Lim Co. vs. Laguesma*, 239 SCRA 460 (December 27, 1994); *Maya Farms*

Employees Organization vs. NLRC, 239 SCRA 508 (December 28, 1994); Loadstar Shipping Co., Inc. vs. Gallo, 229 SCRA 654 (February 4, 1994); Five J Taxi vs. NLRC, 235 SCRA 556 (August 22, 1994).

[7] Batangas Laguna Tayabas Bus Co. vs. Court of Appeals, 71 SCRA 470, 477 (June 18, 1976).

[8] Roche (Philippines) vs. NLRC, 178 SCRA 386 (October 5, 1989).

[9] Dizon vs. NLRC, 180 SCRA 52 (December 14, 1989).

[10] Hernandez vs. NLRC, 176 SCRA 269 (August 10, 1989).

[11] Roche (Philippines) vs. NLRC, *supra*.

[12] Kwikway Engineering Works vs. NLRC, 195 SCRA 526, 531 (March 22, 1991). Note: In this case, the Court found just cause for the employee's dismissal, but for failure to observe due process, the employer was ordered to pay P1,000.00 as "damages."

[13] Pepsi-Cola Bottling Co. vs. NLRC, 210 SCRA 277, 286 (June 23, 1992).

[14] Esmalin vs. NLRC, 177 SCRA 537 (September 15, 1989).

[15] 156 SCRA 435, 444 (December 14, 1987).

[16] *Italics ours*. Vide Art. 1701 and Art. 2219 (10) in relation to Art. 21, all of the Civil Code.

[17] 234 SCRA 632, 638 (August 1, 1994).

[18] Cf. *Dee Hua Liong Electrical Equipment Corp. vs. Reyes*, 145 SCRA 713, 719 (November 25, 1986), where it was stressed that exemplary damages may not be recovered where the party involved is not entitled to moral or compensatory damages, and again because the opposing party was not shown to have acted in a wanton, fraudulent, reckless or oppressive manner.

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