

MABUHAY DEVELOPMENT INDUSTRIES, BOA BROTHERS COMPANY, AND ANTONIO YU LIM BO, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, LORENZO BADELLES, HIPOLITO RAGO, AND MELCHOR R...

G.R. Nos. 108149-50. March 25, 1998

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for certiorari to set aside the decision of the National Labor Relations Commission finding petitioners guilty of illegally dismissing private respondents and ordering their reinstatement with backwages, reversing for this purpose the labor arbiter's contrary decision.

The facts are as follows:

Petitioners Mabuhay Development Industries and BOA Brothers Company are general partnerships owned and managed by petitioner Antonio Yu Lim Bo. Private respondents Lorenzo Badelles and Hipolito Rago were employed as truck drivers at Mabuhay Development Industries and BOA Brothers Company, respectively, while private respondent Melchor Rebuyon was employed as truckman or helper at BOA Brothers Company. Private respondents' job was to receive stocks at the Zamboanga City pier and transport these to the Zamboanga Foodmart of petitioners.

On September 3, 1984, private respondents Hipolito Rago and Melchor Rebuyon, together with four others, were suspended by petitioner Antonio Yu Lim Bo because of alleged shortages in their delivery.[1] Private respondents were subsequently separated from employment on the basis of letters of resignation signed by them on September 7, 1984.[2]

On November 5, 1984, private respondents Lorenzo Badelles and Hipolito Rago filed a complaint for illegal dismissal with prayer for reinstatement against Mabuhay Development Industries, BOA Brothers Company, and Antonio Yu Lim Bo, while private respondent Melchor Rebuyon filed a similar complaint against BOA Brothers Company and Antonio Yu Lim Bo on March 18, 1985.[3]

In their Joint Affidavit (Exh. B)[4] submitted to the Labor Arbiter, private respondents claimed that their liability for some missing items (for which they were dismissed) had not been established; that "the alleged missing crate of pancit was found, while the alleged missing cartons of edible oil were already missing at the Blas Perez warehouse in Canelar, Zamboanga City," when the private respondents received the delivery; that the termination of their employment was without just cause and made without sufficient investigation, and in an arbitrary manner; that they were forced to sign letters of resignation prepared in the office of petitioner Antonio Yu Lim Bo on pain that if they refused they would not be paid for their services from August 16-31, 1984.[5]

Petitioners likewise submitted a position paper[6] in which they alleged that in an investigation conducted by them, private respondents admitted liability for the missing items; that respondents offered to resign in exchange

for petitioners' agreement not to file criminal charges against them and to pay for the missing carton of edible oil.

On July 25, 1989, the Labor Arbiter rendered a joint decision in the two cases, dismissing the complaints of private respondents. He found that private respondents had not been dismissed but that they had resigned after being found responsible for the losses.[7]

A copy of the decision was served on private respondents' counsel on August 18, 1989.[8] Private respondents appealed to the NLRC by filing an appeal memorandum on August 30, 1989 and paying the appeal fees on September 1, 1989.[9]

On April 27, 1992, the NLRC reversed the decision of the Labor Arbiter and ordered the petitioners to reinstate private respondents to their former positions without loss of seniority and other privileges and benefits and to pay them backwages for three years "without qualification or deduction." In addition, petitioners were ordered to pay attorney's fees equal to ten (10) percent of the total monetary award.[10] The NLRC found that private respondents had been illegally dismissed, the offense for which they were forced to resign not having been established. It found (1) that the letters of resignation which private respondents were made to sign had not been translated from English in which they were written, with the result that they were not fully understood by private respondents; (2) that there was no evidence that private respondents signed the letters in exchange for petitioners' desistance from filing criminal charges against them and (3) that before terminating private respondents' employment, petitioners did not give them notice and hearing.[11]

Petitioners moved for the reconsideration of the decision, alleging that private respondents' appeal had been filed more than ten (10) days after receipt of the decision of the Labor Arbiter; that contrary to the NLRC's finding, the private respondents had been afforded due process; that private respondents had been dismissed for cause; and that the award of three years backwages was inconsistent with the ruling in *Globe-Mackay Cable and Radio Corporation. v. NLRC*[12] because in the latter case this Court affirmed an award of backwages for only two years.

As the NLRC denied reconsideration of its decision, this petition was filed. Petitioners contend:[13]

[1] PUBLIC RESPONDENT ERRED IN ASSUMING JURISDICTION TO REVIEW ON APPEAL THE DECISION OF THE LABOR ARBITER.

[2] PUBLIC RESPONDENT ERRED IN ORDERING REINSTATEMENT WITH BACKWAGES.

[3] PUBLIC RESPONDENT ERRED IN AWARDING THREE-YEAR[S] BACKWAGES.

The petition is without merit.

First. Petitioners argue that the NLRC had no jurisdiction to review the decision of the Labor Arbiter because private respondents' appeal was filed three (3) days beyond the ten (10) days provided for in Art. 223 of the Labor Code, which provides:

Appeal. - Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders.

Indeed, as already stated, a copy of the Labor Arbiter's decision was served on private respondents' counsel on August 18, 1989 but they filed an appeal memorandum only on August 30, 1989 and paid the appeal fees only on September 1, 1989. As a rule, the perfection of an appeal in the manner and within the period prescribed by law is jurisdictional and failure to perfect an appeal as required by law renders the judgment final and executory. There may be exceptional cases, however, where, as pointed out in *City Fair Corporation v. NLRC*, [14] greater injustice

may occur if an appeal is not given due course than if the reglementary period to appeal were strictly followed. In such cases, proceedings before such agencies as the NLRC need not adhere strictly to technicalities to attain substantial justice.

In the case at bar, the NLRC was justified in giving Art. 223 of the Labor Code a liberal application because, as will presently be shown, there is no clear evidence to prove that private respondents were liable for the loss of merchandise. In addition, petitioners did not oppose private respondents' appeal or question the jurisdiction of the NLRC until an adverse judgment was rendered against them. Petitioners were thus estopped to deny the jurisdiction of the NLRC.

Second. Petitioners contend that under Art. 279 of the Labor Code an order to reinstate and pay backwages can be made only if it is found that an employee was unjustly dismissed, but, in the case at bar, the only issue before the NLRC was whether private respondents had been dismissed without due process of law because the fact is that private respondents had admitted liability for the shortages.

This is not true. Private respondents did not admit liability for the loss of certain items entrusted to them for delivery to petitioners' Zamboanga Foodmart. As the NLRC stated, the "alleged offense [for which private respondents were dismissed or made to resign] was never established." [15] Contrary to petitioners' claim, private respondents denied they signed letters of resignation in order to avoid criminal prosecution for the loss of the grocery items. They claimed they were forced to resign because petitioners threatened to withhold their wages. Moreover, as the NLRC found, the letters of resignation were in English and were not translated or explained to them.

Indeed, the records show that private respondents' job was mainly to transport stocks belonging to petitioners from the pier in Zamboanga City and transport them to the warehouse of Zamboanga Foodmart or from the warehouse of the various shipping companies and deliver them to the display center of the Zamboanga Foodmart. [16] Petitioners' evidence consisted of the affidavits and testimonies of its warehouseman and checker, Catalino Guadalupe and Sesinio Montana. Guadalupe testified that he found some items listed in the delivery receipt to be missing and that he brought this matter to the attention of Mary Lim, Mabuhay Development Industries comptroller. The delivery receipts were never presented in evidence to show that indeed some items listed therein could not be accounted for when private respondents made delivery at the Zamboanga Foodmart.

What is more, Guadalupe said he could not tell whether the missing items (two cartons of SkyFlakes biscuits) had been delivered to private respondents for transportation to the Zamboanga Foodmart or whether they were already missing when the cargo was received by private respondents from the warehouse. The testimony of Guadalupe, slightly edited, is as follows: [17]

Q - Where did you discover these two (2) cartons of sky flakes as you said lacking?

A - At the premises of Zamboanga Food Mart, when they deliver goods they have a list with them coming from the bodega of the shipping lines. I [compared] this is what is actually received by me and I discovered two (2) cartons of sky flakes missing. I do not know what happen whether they received lacking or whatever.

Q - So that when you discovered that two (2) cartons was lacking you immediately made your report that two (2) cartons are lacking?

A - Yes sir.

....

Q - You mentioned the fact that you were ahead in the employment of Food Mart than the other (3) companions in this case before this particular incidents, was there any other incidents that had also been guilty

of the same missing item being reported in the deliveries if they committed similar things previous to this incident?

A - Only as far the goods received by me by Food Mart, as they made other short delivery, I do not know.

Q - In fact you do not know if the cargo that is loaded in the shipping lines/warehouse are already missing you do not know about that, until it was delivered the warehouse of the Food Mart, is it not?

A - Actually my basis is the list that is supplied by the shipping lines and when the goods arrived at the Food Mart, I made a particular count. I only made a particular count/check with the list and as brought by the shipping lines and see if they tally.

Thus, as observed by the NLRC:[18]

[T]he alleged offense was never established, the missing crate of pancit was found and the alleged lost cartons of edible oil was [sic] already missing at the bodega of Foodmart at the Blas Perez warehouse. Nevertheless, respondent-appellee Antonio Yu Lim Bo dismissed complainants-appellants from their employment on September 1984, by forcing the latter to sign their respective prepared letters of resignation in exchange [for] their withheld August 16 to 31, 1984 salaries, (Exh. "B").

In *Anscor Transport & Terminals, Inc. v. NLRC*,[19] a similar observation was made:

We reject, indeed, Anscor's claims that in absolving Crisostomo, the respondent Commission had misapprehended the facts or had speculated merely on the events. We do not find to be well-taken its reliance on the pieces of evidence supposedly unearthed during the investigation of the case pointing allegedly to Crisostomo's culpability. Cargo receipt No. 10485, which Crisostomo allegedly signed and which allegedly indicated that 450 bags of fertilizer were loaded on board the delivery truck, is not sufficient proof that 450 bags were, in fact, stowed on the truck. Although the private respondent signed the receipt, he is not necessarily bound by its contents, or does he guarantee its correctness, in the absence of any showing that he took part in the loading of the cargo. . . .

Nor were private respondents accorded a hearing. The investigation that petitioners' witness, Mary Lim, said she conducted was designed more to secure private respondents' admission of their culpability than to give them an opportunity to be heard to find out if they were guilty. As we have stated time and again, in investigations of this nature, the employee must be given two notices: (1) notice of the charges against him with opportunity to be heard in his defense and (2) in the event the employer finds the employee guilty, notice of his dismissal stating clearly the grounds therefor.[20] That none of these requisites was followed in this case is clear from the affidavit[21] of Mary Lim, in which she stated:

[A]ll employees report to me all unusual happenings at Foodmart;

[O]n June 26, 1984 Dante Penetrante reported to me that Hipolito Rago and his truckman short-delivered two (2) cartoons (sic) of skyflakes biscuits to Foodmart although per the Delivery Receipt of the Shipping Lines they have made a complete withdrawal from the bodega of the shipping lines at the late Blas Perez Compound;

[O]n August 9, 1984 same fellow reported to me another short delivery of one (1) cartoon (sic) edible oil by the driver Hipolito Rago and his truckman to Foodmart. The Delivery Receipt of the shipping lines clearly stated that they have made a complete withdrawal and in fact the driver acknowledged to have received from the checker of the shipping lines all the goods stated in the delivery receipt;

[O]n August 31, 1984 at about 3:00 p.m. in the afternoon, I noticed through the window of my office at the second floor of Foodmart that there were deliveries of goods by Lorenzo Badelles and his truckman. I was surprised to notice that Lorenzo Badelles is carrying the stocks himself because it is not his usual practice. He always refused to help in carrying goods because he claims of having back pains;

[A]bout 1 hour after Lorenzo Badelles and his truckman started unloading the goods I overheard some discussions between the bodegero and Lorenzo Badelles and Rebuyon. So I went downstairs and inquired what is all about. Dante and Sonny informed me that there was again 1 crate of pancit canton short delivered. So I asked for the delivery receipt from the shipping line from Dante and found that the deliveries received was (sic) complete. So I instructed them to recheck all the stocks that they unloaded and found out that it is really short of one crate. So I inquired from the driver and his truckman Melchor Rebuyon who were inside the Foodmart premises at this time if there were other stocks still found in the truck and both of them answered in the negative;

[A]ll the while Lorenzo Badelles is (sic) the one carrying all the stocks to the Foodmart and his truckman Melchor Rebuyon is (sic) the one who stayed on top of the truck doing the unloading for Lorenzo Badelles to bring the stocks inside the Foodmart premises;

[T]he following morning I instructed my brother-in-law Mr. Francis G. Lim to do some investigation pertaining to the constant losses of stock at Foodmart perpetrated by these two drivers. That I was informed later on by Francis G. Lim that Lorenzo Badelles signified his intention to resign and so I told Francis Lim to inventory his tools in the truck and his other accountabilities;

[O]n September 2, 1984, Francis Lim informed me that Lorenzo Badelles instead of resigning that day he was now cleaning the truck he is driving and not satisfied with his investigation I instructed him to send (sic) Melchor Rebuyon, Hipolito Rago, Benjamin Mariano and Lorenzo Badelles and other truckmen who used to accompany these two drivers to the wharf to get cargoes to the Zamboanga Foodmart;

I confronted each of them separately and requested them to tell me all about the happenings (sic) during the losses and I hinted that I will forgive them for the last time should they tell me the truth;

I also told them that there are (sic) at least two laborers who told me about the mod[us] of operand[i] of these people and my purpose of calling them for confrontation was only to counter check what the other laborers have already told me. That I even hinted that if they will not tell me the truth and if I have sufficient evidence and witnesses to support (sic) I am going to file attempted theft case against them;

[I]mmediately they told me that they will just resign. "Resign na lang kame para walay samok" So I told them you go and see Maricor Sta. Teresa for your clearances;

In her testimony before the Labor Arbiter, Mary Lim said:[22]

Q - Did you conduct [an] investigation?

A - Yes

Q - What kind of investigation did you conduct?

A - I called them

Q - Aside from that investigation you did not conduct any kind of investigation?

A - I called also those in charge in [the] bodega and also the shipping lines

Q - On the dates previous to this, despite [of] that, nothing came out of this and these workers?

A - I warned them.

....

Q. - Now, in the first 2 incidents regarding the skyflakes and the edible oil you said you conducted an investigation and suppose was made on the driver?

A - It was not on the driver alone all and the truckman.

Q - Did you get their statement?

A - I did not get.

Q - So that is how you conducted the investigation?

A - They are (not) under the supervision of my brother-in-law so I requested my brother-in-law he told me nobody tell the truth.

Q - Your conclusion the driver was responsible of the los[s].

A - Before they left the shipping lines their duties to check the stock, it's presumed that they received the stock and anything goes wrong they have the knowledge.

Q - So that base on that thinking that you concluded the driver was responsible. And in the same manner in the case of pancit as you said that somebody was trying to . . . in the truck because you believe that the driver purposely kept the carton described.

A - We cannot tell because the truck is outside . . . and the driver can just drive and . . .

. . . .

Q. - I'm asking as of [sic] result of these incidents you threat[ened] to charge these persons.

A - I called them up I made the investigation I told them to tell the truth and who are really involve[d].

Q - Do you not ask them to resign?

A - I did not.

Q - As a result of these incidents who removed these people?

A - After the incidents that very day I called up my brother-in-law to make necessary investigation and find out who are really the culprit.

Q - This brother-in-law is Francis Lim, did he make any report?

A - That is not our standard procedure.

Q - Of course you did not see him conducting investigation.

A - He was not able to make the investigation because the driver and truckman already left.

Thus, no investigation as required by law was ever made in this case. Mary Lim simply presumed that the missing goods had been received by private respondents and since the latter could not account for them when the stocks were delivered by them, private respondents were presumed to be liable for the loss. This could only be due to the fact that Mary Lim's purpose in investigating was not to give private respondents the opportunity to explain but to make them admit what Mary Lim had been told by other employees. As she admitted in her affidavit, Mary Lim threatened private respondents with criminal prosecution if they did not confess their guilt. Her claim before the Labor Arbiter that she had asked her brother-in-law, Francis Lim, to conduct a formal investigation but the latter was not able to do so because private respondents had "already left" betrays the utter lack of an investigation which should have preceded the dismissal of private respondents.

It is then clear that petitioners failed to prove not only the existence of just cause but they also failed to prove that the private respondents were afforded due process. Art. 277(b) of the Labor Code places the burden of proving

that the termination of employment was for a valid or authorized cause on the employer. The employer's failure to discharge this burden means that the dismissal is not justified and the employee is entitled to reinstatement.[23] Hence, the NLRC correctly ordered petitioners to reinstate private respondents and pay them backwages.

Third. Petitioners' last contention is that the award of backwages should be limited to two years only. They cite *Globe-MacKay Cable and Radio Corporation v. NLRC*[24] in support of their contention. Although in that case recovery of backwages was limited to two years, the matter was not really in issue. There is no discussion why the award was thus limited. The Court simply affirmed the award made by the NLRC. But decisions involving this issue uniformly provided for an award of backwages equivalent to three years without qualification or deduction as a "realistic, reasonable and mutually beneficial solution." [25] After the effectivity of R.A. No. 6715 on March 21, 1989 the rule was changed so that an illegally dismissed employee is now entitled to an award of full backwages.[26] However, as private respondents' dismissal took place on September 7, 1984, the new rule cannot be applied because R.A. No. 6715 has no retroactive application.[27] The NLRC correctly ordered petitioners to pay backwages for three (3) years without qualification or deduction.

WHEREFORE, the petition is DISMISSED and the decision of the NLRC is AFFIRMED.

SO ORDERED.

Regalado (Chairman), Melo, Puno, and Martinez, JJ., concur.

[1] NLRC Record, p. 19.

[2] Id., pp. 49, 54 and 57.

[3] Rollo, pp. 22-23.

[4] Record, pp. 17-18.

[5] Id., p. 15.

[6] Id., pp. 43-44.

[7] Id., p. 258.

[8] Id., p. 270.

[9] Id., pp. 268-270.

[10] Id., p. 276.

[11] Ibid.

[12] 206 SCRA 701 (1992).

[13] Rollo, p. 10.

[14] 243 SCRA 572 (1995).

[15] Rollo, p. 32.

[16] Record, p. 43.

[17] Id., pp. 164 and 173-174 (emphasis added).

[18] Rollo, pp. 30 and 32.

[19] 190 SCRA 147, 149-150 (1990).

[20] Labor Code, Art. 277; Omnibus Implementing Rules of the Labor Code, Bk V, Rule XIV, §§2-6. See, e.g., *Lim v. NLRC*, 259 SCRA 485 (1996); *Tanala v. NLRC*, 252 SCRA 314 (1996).

[21] Record, pp. 145-146 (emphasis added).

[22] *Id.*, pp. 220, 227-228, 230-231 (emphasis added).

[23] *Molave Tours Corporation v. National Labor Relations Commission*, 250 SCRA 325, 329 (1995).

[24] *Supra* note 12.

[25] E.g., *Maranaw Hotels and Resorts Corp. v. Court of Appeals*, 215 SCRA 501 (1992) quoting *Mercury Drug Co., Inc. v. CIR*, 56 SCRA 694, 711 (1974) (Teehankee, J., dissenting).

[26] *Bustamante v. National Labor Relations Commission*, 265 SCRA 61 (1996).

[27] *Balladares, Jr., v. National Labor Relations Commission*, 245 SCRA 213 (1995); *Mendoza v. National Labor Relations Commission*, G.R. No. 122481, March 5, 1998.

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