

**M. F. VIOLAGO OILER TANK TRUCKS, PETITIONER, VS. THE
NATIONAL LABOR RELATIONS COMMISSION AND FELIPE CRUZ,
AMADO MARIANO, RICARDO PASCO, TEOFILO DE LEON AND
ZOSIMO SACDALAN, RESP...**

G.R. Nos. 56950-51. September 30, 1982

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

On July 29, 1980, five drivers who used to work for the petitioner filed complaints with the Regional Office of the National Labor Relations Commission at San Fernando, Pampanga for illegal dismissal, reinstatement with backwages, and such other benefits as they may be entitled to under the law.

According to the complainants, Mr. Miguel F. Violago, proprietor of an oil-tank trucking business, withdrew the trucks driven by them for no just cause and without prior clearance from the Ministry of Labor. They charged that their employer did not give them any separation pay and that during their employment, they were not given sick leave pay, vacation leave pay, and overtime or holiday pay for work on Sundays and holidays. The drivers also alleged that illegal deductions for payments of back premiums to the Social Security System were levied against them and that their employer unilaterally reduced their wages in 1979 without their consent and with no Ministry of Labor's authority. Complainants Felipe Cruz and Zosimo Sacdalan added that their deposits or cash bonds were not refunded when the employer illegally dismissed them.

In its answer, M. F. Violago Oiler Tank Trucks alleged:

"That all the charges filed by the complainant against herein respondent are maliciously false and perjurious, the truth of the matter being that said complainants Teofilo de Leon, Ricardo Pasco Amado Mariano were allegedly suspected/caught by the Petrophil authorities of using device to cheat in receiving and delivering fuel from the compound to the points of delivery and by reason thereof, they were prohibited or banned from entering the Petrophil compound at Pandacan, Metro Manila, thus, as they were not allowed anymore to enter the compound, they abandoned the trucks they were respectively operating.

"That complainant Felipe Cruz was not illegally dismissed as falsely asserted in his complaint, the truth of the matter being as gathered by herein respondent, said complainant being a barrio official and active leader of a mayoral candidate in his municipality, left his work and actively campaigned for the said candidate and after the elections, as, he thought that the other candidate is related to the respondent, he did not report anymore to his work and instead, he filed this complaint.

"That the unlawful and illegal abandonment made by the complainants caused great and irreparable damage and prejudice to the respondent.

That the acts of complainants as stated above, being illegal, respondent most respectfully prays for the dismissal of the complaint."

The Assistant Director for Arbitration of the regional office rendered a decision on October 8, 1980 the dispositive portion of which reads:

"WHEREFORE, IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered:

"1. Ordering respondent M.F. Violago Oiler-Tank Trucks to pay backwages of complainants Felipe Cruz, Ricardo Pasco, Amado Mariano, Teofilo de Leon and Zosimo Sacdalan from the date of their respective dates of dismissal up to the date of this decision, broken down as follows:

"NAMES

BACKWAGES

"1. Felipe Cruz

- P11,475.00

"2. Ricardo Pasco

- 17,550.00

"3. Amado Mariano

- 28,290.00

"4. Teofilo de Leon

- 27,060.00

"5. Zosimo Sacdalan

- 16,500.00

T o t a l

- P100,875.00

"2. Ordering respondent, in lieu of reinstatement, to pay the separation pay of complainants herein at one (1) month for every year of service broken down as follows:

"NAMES

SEPARATION PAY

"1. Felipe Cruz

- P12,150.00

"2. Ricardo Pasco

- 10,800.00

"3. Amado Mariano

- 9,840.00

"4. Teofilo de Leon

- 9,840.00

"5. Zosimo Sacdalan

- 6,000.00

T o t a l

- P 48,630.00

"3. Ordering respondent to pay complainant Felipe Cruz the monthly allowance of P60.00 under PD 1634 from 1 September 1979 to 20 January 1980 or the total amount of P 280.00;

"4. Ordering respondent to pay the emergency allowance of complainant Zosimo Sacdalan from 1 September 1979 to 6 November 1979 or the total amount of P180.00;

"5. Ordering respondent to pay the herein complainants the monetary equivalent of their service incentive leave under Article 95 of the New Labor Code from 1975 up to the date of this decision, as follows:

"NAMES

SERVICE INCENTIVE LEAVE

"1. Felipe Cruz

- P660.00

"2. Ricardo Pasco

- 660.00

"3. Amado Mariano

- 600.00

"4. Teofilo de Leon

- 600.00

"5. Zosimo Sacdalan

- 735.00

T o t a l

- P 3,255.00

"All other claims of complainants are hereby DISMISSED for lack of merit."

The respondent Commission rendered a decision on April 30, 1980 affirming the arbiter's decision but deleting the awards of emergency living allowances to Felipe Cruz and Zosimo Sacdalan and the award of service incentive leave pay to all complainants. Instead of the award of separation pay, the petitioner was ordered to reinstate the complainants with full backwages until actually reinstated.

A careful consideration of the records before Us shows that insofar as respondents Amado Mariano, Ricardo Pasco, Teofilo de Leon, and Zosimo Sacdalan are concerned, the petitioner has been made accountable for a predicament where it had no participation and to answer for circumstances over which it had no control. Justice, fairness, and due process dictate that the questioned decision be modified.

We note that the respondent commission adopted the labor arbiter's findings verbatim and merely added three short paragraphs in its decision which modified the awards with one sentence justifications for each change.

We agree with the petitioner that the conclusions of the arbiter are "patently erroneous and devoid of logical and justifiable consideration." The arbiter called the petitioner's defense that it never dismissed the complainants from employment a mere "theory", inspite of the fact that this defense constituted the crucial issue of the case before him.

According to the arbiter and the commission:

xxx xxx xxx

"x x x As we see it, the fact that complainants herein were not allowed to drive by respondent and more than this alternate drivers were hired by it to take the place of complainants herein, is more than enough justification for us to rule and declare that there is a 'constructive dismissal' in this case. The mere fact that the trucks they were originally driving were taken from them and given to other drivers is mute but clear evidence that they were virtually dismissed from their employment."

The questioned decision states that the "constructive dismissal" may "perhaps" be justified if the explanations of Violago were true.

We find no reason to find the allegations of the petitioner false or mere concoctions. In addition to the affidavits of the three witnesses for the employer and the sworn statements of the Violago manager, the respondent commission wanted documentary evidences from Petrophil certifying that it has banned the complainants from Petrophil premises, that a formal investigation of the supposed pilferage should have been conducted, and that the complainants should have been found guilty. The commission also ruled that Violago should have applied for a clearance to terminate the complainants' employment from the Ministry of Labor and Employment.

These findings ignore the realities of the factual situation. The petitioner has always insisted up to the present that it has nothing against its drivers, it wants them to continue working, it does not suspect them of any wrong doing and it is ready to resume their services as long as they can do the work for which they are employed. All that the

four complainants had to do was to show that they could enter Petrophil, pick up the gasoline or other oil products contracted by Violago for hauling, and deliver the same to the various dealers or gasoline stations of Petrophil.

It was asking too much to have Violago produce the results of a formal investigation by Petrophil that the private respondents were found guilty of cheating in receiving oil products from Petrophil depots and delivering the same to various delivery points. Petrophil had no interest in expending time, money, and effort in conducting a full-fledged investigation. It was wary of certifications that resulted in suits against its officials. The complainants are not its employees. Assuming that Violago and its four drivers could have demanded a formal investigation under the arrangements with Petrophil and, if refused, gone to court, Violago must have felt that it would be risking its entire hauling contract with Petrophil if it went to that extent. Pressed for the kind of evidence required by the respondent commission from Violago, Petrophil may have cancelled the entire contract because of the formally proved dishonesty of a few. Not only four drivers but all employees and the entire fleet would have been idled. As a matter of fact, an affidavit of three constables of the Constabulary Highway Patrol Group (CHPG) and a report of investigation shows that respondent Zosimo Sacdalan was apprehended on November 6, 1979 for violation of BP Blg. 33, that Sacdalan admitted having diverted a portion of 9,000 liters of gasoline on one occasion and 2,000 liters out of 8,000 liters on another occasion and that the persons who supposedly received the diverted gasoline turned out to be fictitious. The statement of Sacdalan during the investigation in Camp Crame was attached to the appeal. Instead of remanding the case for the conduct of hearings or at least looking further into the factual situation, the respondent commission chose to merely copy verbatim the arbiter's findings of facts.

The fact that the four drivers went against their employer who had no command or control over Petrophil when it would have been a simpler matter to show that they were free to haul Petrophil products and that Violago dismissed them for fancied or non-existent reasons shows that the evidence presented by the petitioner was not only adequate but also credible.

The petitioner stresses a due process consideration. It points out that it had no opportunity to present a witness from Petrophil to clarify that the drivers, except Felipe Cruz, were banned from entering the Petrophil compound. It argues that the labor arbiter decided the case, without giving the petitioner an opportunity to present evidence.

The respondents deny that the petitioner was not accorded administrative due process. They state that petitioner's counsel filed an ex parte urgent motion for postponement of the July 15, 1980 hearing and failed to show up during the July 29, 1980 hearing. There were subsequent hearings, according to the respondents, which the petitioner failed to attend. Instead, the petitioner filed its answer to the complaint and its position paper with affidavits and a sworn statement on August 11, 1980 and August 29, 1980 respectively. These formed the basis of the arbiter's decision.

The contention that Violago waived its right to a hearing because of the above absences has no merit. No witness from Petrophil could be presented during those hearings in July, 1980 because the answer was filed only on August 11, 1980. And since the main basis of the labor arbiter's decision was the supposed inadequacy of evidence, an opportunity for a hearing after the joining of issues with the filing of an answer was necessary. More so, when the anomalies in gasoline distribution were so serious that a law, Batas Pambansa Blg. 33 dated June 6, 1979 had to be enacted to meet the situation.

There is another factor ignored by the arbiter and the commission. The private respondents stopped driving the tanker trucks on the following dates:

"1. Amado Mariano

- November 8, 1978

2. Teofilo de Leon

- November 26, 1978

3. Ricardo Pasco

- September 1, 1979

4. Zosimo Sacdalan

- November 6, 1970

5. Felipe Cruz

- January 20, 1980"

The complaint was filed on July 29, 1980.

The fact that it took the first four drivers such a long time to complain about their alleged dismissals dovetails with the petitioner's arguments that there was no controversy between it and the private respondents and that they could drive the tankers anytime that Petrophil allowed them to enter the oil depots.

The case of Mr. Felipe Cruz is a different matter. The petitioner claimed that Cruz abandoned his job after the January, 1980 elections because he actively campaigned against the brother of Miguel F. Violago and chose not to work afterwards. On the other hand, Cruz maintained that he was dismissed because he refused to heed the request of Mr. Violago to campaign for NUL candidates. Cruz was a barangay captain and a KBL party member.

We sustain the respondent commission's ruling on this point:

"The contention of complainant Cruz appears to be logical and meritorious. We do not think that complainant Cruz with a monthly income of around P1 ,350.00 will just abandon his work without any positive proof that he has landed in another job with a larger salary. Being the sole breadwinner in the family, we doubt very much if complainant Cruz will ever abandon his work because by so doing he will surely expose his family to hunger and untold hardships. No man in his right mind will do such thing. And more importantly if it is true that complainant abandoned his work than why did not respondent company file a Report of such abandonment with the Ministry of Labor and Employment. The reason for this is obvious, because there is no such abandonment. Abandonment being absent, the dismissal of complainant Cruz is patently illegal and entitles him to reinstatement to his former position with full backwages."

The petitioner has never deviated from its stand that the private respondents except Felipe Cruz may drive its tanker trucks at anytime they have clearances from Petrophil. There is no basis for the labor arbiter's conclusion that while the respondents are entitled to be reinstated, they should instead be given a total of P153,220.00 in separation pay, backwages, and other benefits because reinstatement would foment industrial unrest.

WHEREFORE, the decision dated April 30, 1981 of the respondent commission is hereby modified. The petitioner is directed to reinstate Amado Mariano, Ricardo Pasco, Teofilo de Leon, and Zosimo Sacdalan, without any payment of backwages, upon their presenting clearances from Petrophil, Inc. that they are allowed to haul Petrophil products and to reinstate Felipe Cruz with full backwages until actually reinstated.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Melencio-Herrera, Plana, Vasquez, and Relova, JJ., concur.

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