

**METRO PORT SERVICE, INC., PETITIONER, VS. HONORABLE
NATIONAL LABOR RELATIONS COMMISSION; HON. LABOR ARBITER
PELAGIO A. CARPIO, MANUEL B. ARBO, ESTANISLAO M. INFANTE,
JOSELITO B....**

G.R. Nos. 71632-33. March 09, 1989

Ponente: PARAS, J.

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PARAS, J.:

In two (2) consolidated unfair labor practice complaints for illegal dismissal filed by private respondents against petitioner with the National Labor Relations Commission, National Capital Region, Manila, docketed as: (1) NLRC Case No. NCR-7-3446-83 entitled "Manuel B. Arbo, Estanislao M. Infante, Joselito B. Jimeno and Eleuterio A. Callenga, complainants versus Metro Port Services, Inc. Respondent"; and (2) NLRC Case No. NCR-9-3948-83 entitled "Santiago L. Fontanilla, complainant versus Metro Port Services, Inc. respondent"; public respondent Labor Arbiter, after trial on the merits, rendered a decision dated November 23, 1984 in favor of private respondents. The dispositive portion of the decision reads:

"IN VIEW THEREOF, judgment is hereby rendered ordering respondent Metro Port Services. Inc. to reinstate the five (5) individual complainants, namely, Manuel B. Arbo, Estanislao M. Infante, Joselito B Jimeno, Eleuterio A. Callenga and Santiago L. Fontanilla to their former or substantially equivalent positions with full backwages from the time of their dismissal until actually reinstated, with all benefits appurtenant thereto as if they were not dismissed."

"The Socio-Economic Analyst is directed to submit the corresponding computation.

"SO ORDERED." (pp. 125-126, Rollo)

Petitioner appealed to the National Labor Relations Commission, which affirmed the decision in a Resolution promulgated on July 22, 1985. The dispositive portion of the resolution reads:

"WHEREFORE, premises considered,-the Motion/Appeal is as it is hereby DISMISSED for lack of merit. Consequently, respondent-appellant is directed to show proof of immediate compliance to the mandate of the affirmed Decision after ten (10) days from receipt of a copy of this Resolution"

"SO ORDERED." (p. 174, Rollo)

Claiming that the NLRC erred in affirming the Labor Arbiter's decision, petitioner instituted the present certiorari proceedings raising the sole issue of— whether or not private respondents were illegally dismissed from their employment.

Private respondent Estanislao M. Infante, as delivery cabo, Joselito B. Jimeno as delivery man, Eleuterio Callenga, as forklift operator and Santiago Fontanilla, as Shed Supervisor, started their employment with petitioner on May 1, 1966. Private respondent Manuel B. Arbo was employed with petitioner in 1979 as locator.

They were all dismissed on July 20, 1983 from their employment.

Petitioner asserts that their dismissal was justified because 'they were found after a formal investigation that they (sic) conspired to commit the aborted pilferage thru insertion of three (3) spare tires (with rims) marked DUNLOP by making it appear that those three (3) tires were spares tires of two (2) units of Isuzu Dump Trucks Nos. 11 & 12 marked 'PAS Manila.' These two trucks had each a spare tire marked 'Bridgestone' (not Dunlop) welded to it." (pp. 217-218, Rollo)

The records of the case belie petitioner's assertion.

Batas Pambansa Blg. 130, in amending paragraph (b) of Article 278 of the Labor Code, imposed as a condition sine qua non that any termination of employment under the grounds provided in Article 283 must be done only after notice and formal investigation having been accorded to the supposed errant worker. Sections 1, 2 and 5 of Rule XIV of the Rules implementing Batas Pambansa Blg. 130 provides:

"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 the case of abandonment of work, the notice shall be served at the worker's last known address."

x x x

x x x

x x x

"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." (p. 234, Rollo)

In the case at bar, private respondents' dismissal was not preceded by any formal investigation. The so-called "interrogation" conducted by the petitioner's Security personnel did not satisfy the requirements of the law. Private respondents were not allowed to explain or air their side.

The act of petitioner in dismissing private respondents without first conducting a formal investigation is arbitrary and unwarranted. The right of an employer to dismiss an employee differs from and should not be confused with the manner in which such right is exercised. It must not be oppressive and abusive since it affects one's person and property. On this point alone, private respondents' dismissal becomes illegal and unjustified.

Anent petitioner's charge that private respondents conspired to commit the aborted pilferage of three (3) tires, We find from the records that the same was not substantiated. Petitioner failed to prove that the three (3) spare tires in question did not form part of the spare tires of the two (2) Isuzu Dump Trucks. On the contrary, private respondents have indubitably shown that as per "Packing List" submitted by Casco Trading Company, the two (2) Isuzu Dump Trucks had five (5) pieces of spare tires which included the subject three (3) spare tires. The "Packing List" reads —

"Packing List

Contract No. PAS

Consignee — Pines Auto Supply
Manila, Philippines
Shipped per Dona Pacita II
From Yokohama, Japan to Manila,
Philippines direct sailing on or
about May 1, 1983

x x x

x x x

x x x

EP 782-12-00

No. 11-12 Used 12 Ton Dump 2 Units
truck (1976 Year Model) with
5 pcs. Spare tire
Chassis No. Engine No. SRZ 450-1819626
10 PA 1-936417 (No. 11) SR2A50-18 19704

C/No. 5A Tools for the above
trucks 2 sets

Total 24,350 Kgs. 146.234M3

PAS

MANILA

No. 11-12

C/No. 5A

MADE IN JAPAN

Total: three (3) packages only

May 1, 1983

for CASCO TRADING

COMPANY

By: Illegible x x x"

(p. 39, Record)

(p.236, Rollo)

The foregoing clearly proved that there was no basis whatsoever for petitioner's charge that private respondents conspired to smuggle out the three (3) spare tires.

WHEREFORE, for lack of merit, the petition is DISMISSED, but the backwages awarded in the NLRC decision dated November 23, 1984, in Case No. NCR-9-3948-83 are hereby limited to three years only. Costs against petitioner.

SO ORDERED.

Melencio-Herrera (Chairman), Padilla, and Regalado, JJ., concur.

Sarmiento, J., no part, was a former counsel of the petitioner.

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