

PACIFIC CEMENT COMPANY, INC., BRUNO GRUENDER, ALBRECHT BAKE, CARMELO V. VILLALOBOS, RAMON C. YBUD AND NOEL R. TAN, PETITIONERS, VS. THE NATIONAL LABOR RELATIONS COMMISSION, FERM...

G.R. Nos. 78871-72. May 05, 1989

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The instant petition seeks to annul on the ground of grave abuse of discretion the public respondent's decision dated August 19, 1986 ordering the reinstatement of the private respondents and the payment of backwages and damages.

The antecedent facts of the case are as follows:

Before their termination, private respondents Norberto S. Merto, Jr. and Fermin T. Baure worked as manager and assistant manager, respectively, in petitioner-company's port department in Surigao City.

Sometime in January 1983, an investigation was conducted by petitioner Carmelo V. Villalobos, petitioner-company's internal auditor, regarding the operations at the private respondents' department.

The investigation uncovered certain irregularities for which the private respondents together with their Port Section Head, Luisito Borja, were made responsible. The irregularities basically pertained to alterations and discrepancies in the port operations logbook concerning the utilization of and rental payment for the Uraga Lorain crane being leased from one Alfredo S. Chua for port operations in the private respondents' department.

On February 7, 1983, the private respondents through separate memoranda issued by petitioners Albrecht Bake and Noel R. Tan were made to explain their involvement in the reported irregularities. In the case of private respondent Merto, he was made to account for the representation he made that "the crane was at stand-by time despite (his) knowledge and consent of the fact that said crane was being utilized by the Philippine Ports Authority (PPA) for the removal and driving of fender piles at the government pier" for which rental payments were made to Chua in the 28th and 29th of November and on the 16th up to the 21st of December 1982. With respect to private respondent Baure, he was made to clarify the alterations in the port operations logbook relating to the incidents of August 1st up to the 6th and August 12th, 1982 where "the original entries of either 'breakdown' or 'out-of-order' were clearly superimposed with the words 'standby' in bigger and bolder letters" and where, as in Merto's case, rental payments were given to Chua. In the said memoranda, a provision for the preventive suspension of the private respondents was further included. Petitioner Ramon C. Ybud was assigned to handle the duties of the private respondents while they were on preventive suspension.

On February 8, 1983, both the private respondents wrote separate explanation letters. Merto stated that his actions were in accordance with the provisions of the crane contract. His letter reads as follows:

0 38-83-034 I

February 8, 1983

TO : Dr. Albrecht H. Bake

FROM : N.S. Merto Jr.

CC : JLC, GM, AAI, RCY, file

Re : Explanation

Hereunder is my explanation to your Feb. 7 memo. The actions I took were in accordance with the provisions of the crane contract (attached) executed by the Company on October 28, 1982, as follows:

1. Paragraph 5 of said contract guarantees the crane owner a minimum 7 hours daily rental irrespective of whether the unit is used or not.

I do not think it is the intention of the company to deprive the crane owner that right if the latter was able to make use equal number of crane time in his performing a private work contract, i.e. PPA work, which he is expressly allowed to do.

2. Paragraph 4 of the same contract, all crane owner to perform private contractual work using the same contract unit.

Because of this tolerance granted by the company to the crane owner, the stand by location station of the contract unit has to be made silent (unspecified) in the contract. The contracting parties understood from the very beginning that the standby location station of the crane may at any time be at the owner's place, or any other place where it can be conveniently called upon and immediately for use but never envisioned to be always at Portsite to enable the crane owner to qualify to have earned the stipulated guaranteed minimum daily rental.

3. Pertaining FTB and LDB, my investigation disclosed that the superimpositions were done to rectify some deficiencies of the log book entries. As to why company's option to utilize rented crane during its standby hours was not exercised, I have gathered the facts that our crane was then perfectly working well and use of option was considered not necessary.

(Sgd.) NS MERTO JR.

(Exh. "4"-respondent and Exh. "B"-complainants)." (Rollo, pp. 83-84)

On the other hand, Baure disclaimed any direct participation in the irregularities and justified the erasures in the logbook in the following manner:

"Surigao, February 8, 1983

"Mr. Albrecht H. Bake

Vice President-Operation

Pacific Cement Co., Inc.

Surigao City

Sir:

This has reference to your letter of February 7, 1983 requesting explanation why no proper disciplinary and/or appropriate action should be taken against me for apparent involvement on the matters mentioned therein.

With respect to case No. 1 of your letter, I wish to state that I have no knowledge whatsoever nor did I participate in allowing the use of the crane by the Philippine Ports Authority during the periods comprising November 28 and 29 and December 16-21, inclusive. Mr. N. S. Merto whose signatures appear on the statements is in the best position to explain this matter.

In case No. 2 the original entry of either 'breakdown' or 'out-of-order' during the period August 1-6 and 12, 1982 as appearing in the Port Operations Logbook is not entirely accurate as the crane was at standby time at the portsite. Of course, during the period there were instances when the crane was checked up for minor mechanical defect to keep it always in a very good running condition but those brief instances of mechanical check-up might have occurred in the mind of Mr. Luisito D. Borja when he amended the original entries in the Port Operations Logbook to conform to the truth and the fact that the crane was neither 'out-of-order' or 'broken down' but on standby time and in good working condition at the portsite.

As regards case No. 3, I feel that Mr. Borja is competent to explain the entries attributed to him in the Port Operations Logbook.

May I include in this explanation that I have served this company for 18 years. As one of the pioneers, I have always treasured my position the way I treasure my life. Now that I am nearing the period of my retirement, it would be the highest of irresponsibility for me to exchange my position for anything that would stain my clean record and leave a stigma upon my honor and that of family.

I trust, therefore, that the foregoing explanation rests with your satisfaction.

Very truly yours,

(Sgd.) FERMIN T. BAURE, JR.

cc: JCC; GM; AAI; RCY; NRT

(Exh. '5'-respondent)." (Rollo, pp. 84-85)

A plant-level investigation ensued after which Borja was reinstated to his former position on February 16, 1983 after serving a 15-day suspension from work. Pending official action on their cases, Merto and Baure, on February 21 and 22, 1983, respectively filed with the public respondent's Arbitration Branch in Region X a complaint for illegal suspension/dismissal, oppression and damages against the petitioners.

On January 31, 1984, after a joint hearing, the Labor Arbiter rendered a decision against the petitioners with the following dispositive portion:

"WHEREFORE, IN VIEW OF THE FOREGOING, judgment is hereby rendered ordering Pacific Cement Co., Inc. to reinstate Norberto S. Merto, Jr. and Fermin T. Baure to their former position without loss of seniority rights and to pay them the following:

"I. NORBERTO S. MERTO, JR.

1. P89,850.00 - as backwages and other benefits appurtenant to the position
2. P200,000.00 - as moral damages
3. P100,000.00 - as exemplary damages
4. P15,000.00 - reimbursement of actual expenses

P404,850.00 - Total

"II. FERMIN T. BAURE

1. P63,396.00 - as backwages and other benefits appurtenant to the position
2. P200,000.00 - as moral damages
3. P100,000.00 - as exemplary damages
4. P15,000.00 - reimbursement of actual expenses

P378,396.00 - Total

and

"III. P78,324.60 - representing ten percent (10%) of the total award as attorney's fee."

(Rollo, pp. 29-30)

On appeal, the National Labor Relations Commission (NLRC) on August 19, 1986, affirmed the Labor Arbiter's finding that the private respondents were illegally dismissed and entitled to reinstatement with backwages. However, as regards the award of damages, the public respondent deleted the sum of P15,000.00 representing the reimbursable amount of actual expenses considering that the award of backwages partakes the nature of actual damages. Moreover, the award of moral damages was reduced to P30,000.00 to each of the private respondents and that of exemplary damages to P20,000.00 each. The award of 10% attorney's fees was further made on the basis of the aforementioned modifications.

On September 11, 1986, a motion for reconsideration was filed by the petitioners. The public respondent denied the said motion in its resolution dated May 15, 1987. Hence, the petitioners elevated the present case relying on the following grounds:

THE HONORABLE COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION:

I. WHEN IT AFFIRMED THE FINDING OF THE HONORABLE LABOR ARBITER THAT THE RESPONDENTS WERE ILLEGALLY DISMISSED DESPITE A CLEAR ABSENCE OF LEGAL AND/OR FACTUAL BASIS AND IN ORDERING THE REINSTATEMENT OF PRIVATE RESPONDENTS WITH FULL BACKWAGES.

II. WHEN IT AFFIRMED, WITH SLIGHT MODIFICATION, THE AWARD OF MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES TO PRIVATE RESPONDENTS BY THE HONORABLE LABOR ARBITER.

(Rollo, pp. 16-17)

The petitioners argued that the private respondents were never dismissed. They were still under preventive suspension when they brought their case before the Labor Arbiter. In connection therewith, the petitioners invoked Sec. 3, Rule XIV of the Implementing Rules of the Labor Code, as amended, which states that:

"SEC. 3. Preventive Suspension. - The employer may place the worker concerned under preventive suspension of his continued employment poses a serious and imminent threat to the life or property of the employer or of his co-workers."

There is no question that pending investigation on the alleged irregularities committed by the private respondents the petitioners can order that the latter be placed under preventive suspension. However, the petitioners failed to

comply with the succeeding section of the aforesaid provision which mandates that:

"SEC. 4. Period of Suspension. - No preventive suspension shall last longer than 30 days. The employer shall thereafter reinstate the worker in his former or in a substantially equivalent position or the employer may extend the period of suspension provided that during the period of extension, he pays the wages and other benefits due to the worker. In such case, the worker shall not be bound to reimburse the amount paid to him during the extension if the employer decides, after completion of the hearing, to dismiss the worker."
(Underlining ours)

It is true that when the private respondents filed complaints with the NLRC Arbitration Branch, the company investigation was still going on and no official decision to terminate them had been issued. Contrary, however, to the petitioners' claim that the private respondents were merely preventively suspended the evidence shows that an advertisement for applicants to the position of Port Manager (Merto's designation) appeared in the January-February 1983 issue of the Pacific Cement Perspective, a bi-monthly publication of the petitioner-company. The Company had made up its mind to dismiss them. The records further establish the fact that the person directly responsible for the alterations in the port operations logbook, Luisito Borja, was reinstated to his former position after serving a 15-day suspension. Up to the time that the Labor Arbiter handed down its decision in 1984 the petitioners had not been able to take any official action concerning the cases of Merto and Baure. Hence, there is no doubt that the private respondents are deemed dismissed. The issue is - was the dismissal illegal. It is an oft-repeated pronouncement in Labor cases with respect to the termination of employment that:

"x x x (w)hile the right to dismiss or lay-off an employee is management's prerogative, it must be done without abuse of discretion, for what is at stake is not only private respondents' position but also their means of livelihood." (Unitran/Bachelor Expres, Inc., et al. v. Jose Olvis, et al., G.R. Nos. 76724-6, August 31, 1988 citing *Bachiller v. NLRC*, 98 SCRA 393; see also *International Harvest Macleod, Inc. v. Intermediate Appellate Court*, 149 SCRA 641).

There is an element of unfairness in the actions taken by the petitioners. Mr. Luisito Borja, the immediate boss of the private respondents, who had caused the alterations in question was made to report back to work after a 15-day suspension while the respondents were dismissed. This taints the presumably impartial character of the petitioner-company's plant-level investigation.

We stated in *Mary Johnston Hospital, et al. v. National Labor Relations Commission, et al.* (G.R. No. 73839, August 30, 1988) that "the determination of the existence and sufficiency of just cause must be exercised with fairness and in good faith and after observing due process".

Moreover, the test of our review authority is grave abuse of discretion. The facts ascertained by the public respondent and, the arguments raised by the petitioners do not show manifestly reversible error on the part of the NLRC which is clearly equivalent to grave abuse of discretion.

Whether or not the crane was on company stand-by time or working for the Philippine Ports Authority on a private contract of the owner, Pacific Cement would still pay the minimum seven hours daily rentals. There is nothing in this petition to show that the private respondents made any money or otherwise profited from the alterations in the company's operations' logbook. The prejudice to Pacific Cement is likewise not clear because the crane of Mr. Chua could be pulled out of the PPA project area and brought to the company's port area anytime there was a need to use it for port operations. The penalty of dismissal is unduly harsh under the circumstances and to that extent the termination of employment becomes illegal.

It was error, however, for the NLRC to order reinstatement.

Messrs. Merto and Baure are the manager and assistant manager respectively of Pacific Cement's port department in Surigao City. A company which no longer trusts its managers, especially those assigned to regional or branch operations, cannot operate freely in a competitive and profitable manner. The NLRC should know the difference between managers and ordinary workingmen. It cannot imprudently order the reinstatement of managers with the same ease and liberality as if it were dealing with laborers or rank and file workers who have been terminated in their employment.

The records show that there is some basis for the petitioners to be mistrustful of the loyalty and dedication of the private respondents to Pacific Cement. Even then, the relations between the respondents and the Makati top brass were no longer in the same category as those with Mr. Borja who was pardoned and accepted back. There can be no question about the relations now.

No prejudice may have been caused the petitioners by the altered entries in the company logbooks but it still does not speak well of a manager to state that a leased equipment is on company stand-by when the truth is it was being used elsewhere by somebody else. A manager worth his title and position should not carelessly place "break-down" or "out-of-order" for a crane which is on company stand-by. Even the need for mechanical check-ups does not warrant an entry of breakdown or out-of-order. The company has a right to expect precision and accuracy in entries on company records from its managers.

For the above reasons, we find the awards of damages and attorneys' fees unwarranted because the private respondents are not completely without fault. The fact that Mr. Borja, the manager primarily responsible for the alterations, was meted out only 15 days suspension does not clear the respondents completely. It is a company prerogative to choose who to appoint or reappoint as its managers as long as arbitrary prejudice is not thereby caused, without reason, to those who are not so chosen. No damages or attorney's fee should be paid.

We, therefore, affirm the grant of backpay for a period not exceeding three years, without qualification or deduction, to the private respondents. (*Far East Bank & Trust Co. v. Intermediate Appellate Court, et al.*, G.R. Nos. 73131-32, [1988]; *D.M. Consunji, Inc. v. Pucan*, 159 SCRA 107 [1988]; *Flores v. Nuestro*, G.R. NO. 66890, April 15, 1988). However, in lieu of reinstatement, the petitioners shall pay separation pay to the private respondents in accordance with the agreement or company policy or, in the absence thereof, the applicable law (*Manila Midtown Commercial Corp. v. Nuwhrain (Ramada Chapter)*, 159 SCRA 212 [1988]; *Bautista v. Inciong*, 158 SCRA 665 [1988]).

WHEREFORE, the questioned decision of the National Labor Relations Commission is hereby MODIFIED. The petitioners are ordered to pay the private respondents backpay equivalent to a three year period, without qualifications or deductions and, in lieu of reinstatement, separation benefits as outlined above.

SO ORDERED.

Fernan, C.J., (Chairman), Bidin, and Cortes, JJ., concur.
Feliciano, J., no part.

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