

PHILIPPINE ASSOCIATED SMELTING AND REFINING CORPORATION (PASAR), PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, LABOR ARBITER JESSELITO LATOJA, RUFO ELUMIR, AND EDGARDO VI...

G.R. Nos. 82866-67. June 29, 1989

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BIDIN, J.;

This is a petition to review on certiorari the resolution of the National Labor Relations Commission (NLRC) which affirmed the Labor Arbiter's decision ordering Philippine Associated Smelting & Refining Corp. (PASAR) to reinstate Rufo Elumir and Edgardo Vilbar "to their former positions without loss of seniority rights and privileges and to pay them their full back wages computed from the date of their illegal dismissal up to the date they are actually reinstated."

The findings of the Labor Arbiter as adopted by the National Labor Relations Commission are as follows:

"These are consolidated cases both for illegal dismissal brought by two employees of respondent Philippine Associated Smelting and Refining Corporation (hereinafter, PASAR).

"Complainants RUFO ELUMIR and EDGARDO VILBAR were employed by respondent on July 15, 1982 and March 3, 1984, respectively, as Plant Operators at the Leyte Industrial Estate, Isabel, Leyte. Both were assigned at the Selenium Section of the plant. They were dismissed on December 23, 1985 from respondent's employ for alleged pilferage of dore metal (precious metals like gold and silver which are by-products of PASAR).

"Complainants' troubles began on November 22, 1985 when Henry Berezo, a LINSI Security Guard detailed at the dore plant confessed to the existence of a pilferage syndicate of which he himself was a member. He implicated a number of PASAR employees, among them the two complainants here. Berezo narrates in his statement (Exh. D):

'Sometime in the last week of February 1985, while I was detailed at the main door of Dore Plant, I was approached by Mr. Edgardo Vilbar, a Selenium Operator, and told me that they will bring out Dore Metal. He did it for two times but I refused. But in the third time, because I was in need of money, I agreed. The Dore Metal was brought thru Selenium. I cannot however, remember the date when VILBAR brought out the metal. On March 4, 1985 I was given P2,000.00 pesos by VILBAR as my share for the loot and it was given to me at a boarding house in Matlang. In the month of May 1985, VILBAR again brought out Dore Metal and I was given P3,000.00 pesos by him at the same place in Matlang. In the month of July 1985, Mr. RUFO ELUMIR,

also a Selenium operator brought out Dore Metal and I was given P1,000.00 pesos by Mr. APOLINAR MONTANO as my share in the house of one Mendola at Matlang.'

"Respondent created an Investigation Committee which placed complainants and their alleged co-conspirators under preventive suspension. Due process ran its course. The committee found complainants and the others to have conspired and participated in the theft of dore metals.

"Was just cause for complainant's dismissal proved in the present proceeding?

"This office finds the evidence presented by respondent insufficient to conclude that complainants ought to be dismissed.

"Respondent relies solely on the 'confession' of Henry Berezo with no other evidence, corroborative or otherwise, to speak of.

"Henry Berezo's 'confession' asks more questions than it answers.

"How were complainants able to bring out dore metals from PASAR's dore plant?

Respondent states emptily that complainants were dore operators. But Berezo himself confirms complainant's assertion that they were assigned at the Selenium Section, not the Dore Section. It is uncontested that the rules and regulations of respondent absolutely prohibit plant operators assigned at the Selenium Section from entering dore Section. Moreover, there are security guards other than Berezo stationed at both dore and selenium sections who are equipped with metal detection devices. There are, additionally, teams of other security guards at the main gate assigned to frisk or inspect bodily anyone including plant operators on their way out of the plant. Even assuming that Berezo was indeed part of the conspiracy and allowed complainants to pass through him with stolen dore metals, complainants still had the other security guards at either dore or selenium sections and those at the main gate to contend with. Unless all or a very large number of the security guards were part of the alleged conspiracy, complainants or anybody else for that matter, could not have brought out any dore metal illegally. But there is no showing of such widespread conspiracy.

"Indeed, there is not even adequate evidence to establish conspiracy. There is only the confession of Henry Berezo which under strict technical rules is not even admissible as evidence against complainants. It is miserably lacking in weight and sufficiency.

"Respondent's evidence, it should be said, comes from a polluted source. Complainants may have been implicated as easily as it were to deflect bulk of the blame away from Berezo and pin it on complainants primarily and a few others. Respondents never attempted to explain the circumstances surrounding Berezo's confession. Neither did he, credibly.

"Nor did respondent explain, through Berezo, when the alleged pilferage of dore metals was committed or how much dore metal was taken out by the alleged conspirators. While proof beyond reasonable doubt is not demanded in this proceeding, important details could have been provided to convince this office that the charges against complainants bear substance. There was none.

"While it is recognized that the power to dismiss employees falls within sound management prerogative, this Office holds that the prerogative has been improvidently wielded in these cases." (Rollo, pp. 24-28).

The labor arbiter ruled that the two complainants were illegally dismissed.

On appeal, the NLRC affirmed the labor arbiter's decision in toto.

Hence, this petition.

The petitioner corporation raises a lone issue in this petition, to wit:

DID THE NLRC ACT CONTRARY TO LAW AND IN GRAVE ABUSE OF DISCRETION IN DECIDING THAT THE DISMISSAL OF PRIVATE RESPONDENTS WAS UNJUSTIFIED AND ORDERING PETITIONER TO REINSTATE PRIVATE RESPONDENTS AND PAY BACKWAGES.

The petitioner corporation contends that the private respondents were dismissed for a just cause, namely — loss of trust and confidence as a result of the theft committed by the latter. This contention clearly questions public respondents' findings of fact.

It is a well-established rule that findings of fact of administrative bodies, if based on substantial evidence, are controlling on the reviewing authorities. (Doruelo v. Ministry of National Defense, G.R. No. 51214, January 26, 1989; Bondoc v. Court of Industrial Relations, G.R. No. 33955, January 26, 1989; Castro v. Court of Appeals, G.R. No. 34613, January 26, 1989; Planters Products, Inc. v. National Labor Relations Commission, G.R. No. 78524, January 20, 1989; Industrial Timber Corp. v. National Labor Relations Commission, G.R. No. 83616, January 20, 1989). After a careful review of the records of the case, We find no reason to depart from this general rule.

The basis for private respondents' dismissal is Henry Berezo's statement implicating them in the pilferage of dore metals.

The presence of conspiracy was not substantially proven in the case at bar. As noted by the labor arbiter, petitioner "relies solely on the 'confession' of Henry Berezo with no other evidence, corroborative or otherwise, to speak of."

We quote the Solicitor General's observations, to wit:

Perusal of the records shows that there was no just cause, to warrant disciplinary action of dismissal against private respondents, ne evidence shows that private respondents were dismissed from employment by petitioner on the basis of the alleged confession of Henry M. Berezo, a Linsi security guard assigned at the Dore Plant, regarding the existence of a pilferage syndicate. While there was an investigating committee created to unearth the alleged anomaly, the committee merely inquired about the names of employees involved in the pilferage of dore metals. The statements of the lone material witness, Henry M. Berezo, both before the investigating body and the Honorable Arbiter only show his participation and only vaguely described how and when the illegal act was committed and what was the particular participation of each member. Berezo simply enumerated some names and the amount he allegedly received from them as the share of the loot. He was not even aware of the quantity of metals brought out of the plant. 'Even clarificatory questions were not answered squarely because Berezo had no knowledge of them (pp. 27-33, Rec). As the Honorable Labor Arbiter aptly put it, the evidence comes from a polluted source because the circumstances as to how the confession came about were not explained.

"It was established that the company premises were heavily guarded considering the nature of petitioner's operations, so that each section was guarded by a Linsi security guard who would routinely inspect the body of any person who got in and out of any section in the premises especially in the dore section where the precious metals are refined and stored. It is inconceivable that private respondent could just bring out dore metals without being detected since they have to pass several guards equipped with technically efficient metal devices before they could reach the main gate where all employees are frisked and/or bodily inspected by another team of security guards. Moreover, plant operators have supervisors who also routinely inspect all operators under them before they could leave their particular section (p. 23, TSN, Case No. 0234-86 or p. 100, Vilvar).

"Undisputedly, there are rules and regulations absolutely prohibiting plant operators assigned at Selenium Section, like private respondents, to enter the Dore Section. Obviously, they could not just enter the Dore Section without being noticed by other employees and the guards. That being the case, petitioner could easily get several witnesses to testify that indeed private respondents entered the Dore Section to support petitioner's claim that private respondents took precious metals from the Dore Section and brought them out of the plant through the Selenium Section which was also guarded by another security guard. Therefore, it was not established that the act complained of was really committed by private respondents. No report of losses was received by the management. Moreover, petitioner did not demand accounting or inventory of stocks to determine if they really incurred losses in their product which is a normal business activity especially in petitioner's business where strict inventory is a must. Apparently, this was not resorted to as this would negate petitioner's claim of pilferage. The statement of petitioner's witnesses Roger Buencamino, Alberto Tubac, and Jimenez Guerrero did not contain any declaration implicating private respondents to the alleged conspiracy or to the pilferage (p. 26, Rec). Still surprising was that the matter was not reported to the police. Considering the seriousness of the offense and the financial damage it would cause to the petitioner, they should have referred the matter to the authorities for proper investigation. No criminal case was filed against private respondents. The circumstances surrounding the alleged confession was not clarified. The investigation conducted by the investigating body did not give sufficient information which would shed light to the expose made by Berezo. There was no independent investigation except the doubtful confession of Berezo. No prima facie credence should be accorded to a culprit's admission about somebody else's participation in a crime as the obvious motive is to lessen his wrongdoing (p. 14, TSN, May 15, 1987). Surely, it would be most unfair to consider private respondents as guilty upon being merely implicated by someone caught redhanded. Suspicion is not a fair and reasonable basis to give rise to breach of petitioner's trust and confidence as a ground for dismissal (Alberto, et al. v. Macondray Co., Inc., NLRC Case No. LR 3030). The Labor Arbiter and the NLRC found the evidence on record wanting in some important factual aspects as to be able to support the conclusion that there

was misconduct on the part of private respondents to justify loss of confidence by petitioner. Such being the case, private respondents' dismissal was illegal since there was no just cause as required by the Labor Code." (Rollo, pp. 55-58)

It is not enough for an employer who wishes to dismiss an employee to charge him with theft or some other wrongdoing. The validity of the charge must be established in a manner consistent with due process. Accusation cannot take the place of proof. A suspicion or belief no matter how sincerely felt cannot substitute for factual findings carefully established through an orderly procedure.

The petitioner has failed to show grave abuse of discretion insofar as the finding of illegal dismissal is concerned. An award of three years backwages without qualification or deduction is, therefore, proper.

Reinstatement is, however, an entirely different matter.

The petitioner may have failed to establish with adequate evidence the charges of theft of dore metals but it does not follow that the losses from stealing are imaginary or totally unfounded. The fact that the investigation was not more thorough or the case before the public respondents not better handled does not mean that the suspicions of dishonesty are actually without basis.

The petitioner cannot be compelled to retain employees whose honesty and loyalty it sincerely doubts. It cannot adopt special measures insofar as the private respondents are concerned, continually watching and tailing them to insure that precious metals are not spirited away. It would also be unfair to the employees to continue working in an atmosphere of distrust and suspicion. The strained relations between employer and employees stand in the way of reinstatement. Termination benefits according to any existing bargaining agreement, established company policy, or the applicable law may be given in lieu of reinstatement. (*Hydro Resources Contractors Corp. v. Pagalilauan*, G.R. No. 62909, April 18, 1989).

WHEREFORE, the questioned resolution of the National Labor Relations Commission is hereby MODIFIED. The petitioner is ordered to pay the private respondents the equivalent of three (3) years backwages without qualification or deduction and to pay separation benefits as above-stated in lieu of reinstatement.

SO ORDERED.

Fernan, C.J., Feliciano, and Cortes, JJ., concur.

Gutierrez, Jr., J., no part as one of the lawyers in this case is now a partner of his son.

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