

ASSOCIATED LABOR UNIONS (ALU), JOSE AJERO AND ANTONIO AJERO, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, J. B. ORCHIDS PHARMACEUTICALS, INC. AND/OR TOMAS B. SIAN, JR. ...

G.R. Nos. 83886-87. September 20, 1990

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Before us for review is the resolution of the respondent National Labor Relations Commission (NLRC) which set aside the decision of the Labor Arbiter in two cases for illegal dismissal and remanded the records to the Labor Arbiter of origin for further appropriate proceedings.

In assailing the NLRC resolution, the petitioners' main contentions are as follows:

"I. The respondent Commission erred in holding that private respondents are denied due process; and

II. The respondent Commission took cognizance of a decision which is already final and executory." (Rollo, p. 7)

Petitioners Antonio Ajero and Jose Ajero are brothers who filed two separate cases for illegal dismissal on November 29, 1983 and December 8, 1983, respectively, against their employer, J. B. Orchids Pharmaceuticals, Inc. and/or Tomas B. Sian, Jr. Petitioner labor organization represented the Ajeros in the two cases which were consolidated before Labor Arbitration Branch No. 7 of respondent NLRC in Cebu City.

In both cases, the petitioners-complainants asked for reinstatement with full backwages, for recovery of unpaid wages, holiday pay, 13th month pay, emergency cost of living allowance, vacation and sick leaves and commissions and for the refund of illegal deductions from salaries and certain commissions.

On January 23, 1984, the preliminary conference/hearing of the consolidated cases was set for January 31, 1984. This scheduled hearing was further reset on several occasions, i.e., on February 8, 1984, March 14, 1984, March 22, 1984 and April 9, 1984 with warning that if the private respondents still failed to controvert the petitioners' claims, the public respondent would act accordingly. The private respondents and/or their counsel failed to appear on all the dates of the scheduled hearings, except on February 8, 1984 when their counsel of record, Atty. Avenescio Piramide entered his appearance as evidenced by the minutes thereof. (Exhibit "A")

On February 15, 1985, after the private respondents failed to appear on the last scheduled hearing or file their position paper, the then Labor Arbiter Vito J. Minoria rendered a decision in favor of the petitioners ruling as follows:

"WHEREFORE, with the foregoing premises considered, the respondents J.B. Orchids Pharmaceuticals, Inc. and/or Tomas Sian, Jr. are hereby ORDERED TO PAY jointly and severally in ten (10) days period petitioner ANTONIO C. AJERO the sum of 900.00 for legal holiday pay, P7,254.00 for premium pay for holiday and rest day, P950.00 for unpaid commission for the year 1981, P12,878.00 for refund of commission illegally

deducted by respondents due to hospitalization of co-petitioner brother Jose C. Ajero and P6,500.00 for refund of commission deducted for alleged shortages from sales of penicillin ointment (Duswald Products Co.) banned by duly constituted authorities and to pay petitioner JOSE C. AJERO the sum of P477.20 for legal holiday pay, P5,940.00 for unpaid wages, P510.00 for bonus or 13th month pay for year the 1983, P15,543.44 for unpaid emergency cost of living allowances, P28,200.00 for unpaid commission for three (3) years, P1,431.60 for unpaid vacation and sick leaves, P11,122.00 for amount refundable to petitioner repayment of hospital bills, P7,801.92 for overtime pay for three years 1980, 1981 and 1982 and P3,845.24 for premium pay for holiday and rest day and pro-rata to pay both petitioners the sum of P20,000.00 or P10,000.00 each as moral and exemplary damages being consistent with law, equity and justice, or the total aggregate sum of ONE HUNDRED TWENTY-THREE THOUSAND THREE HUNDRED FIFTY-THREE and 40/100 PESOS or (P123,353.40), the sums of money to be paid through the Commission and/or in its failure to pay in the period stated shall deposit the said sum with the Commission and in case an appeal is filed the respondents are required to deposit the said sum by way of a supersedeas bond with the Commission and the respondents (are) also hereby ORDERED to reinstate both petitioners back to their former positions with full backwages including all benefits without loss of seniority rights from the time they were unjustly dismissed until actual time of reinstatement." (Rollo, pp. 37-38)

The private respondents received a copy of the Labor Arbiter's decision on March 14, 1985 as evidenced by the signature of Atty. D.A. Nunez, who received the Notice of Decision on behalf of the counsel of record.

On March 25, 1985, the private respondents filed in the alternative a Verified Urgent Motion to Set Aside the Decision; and/or for New Trial of the Cases; and/or for Reconsideration thereof; and/or Appeal.

On April 8, 1986, respondent NLRC resolved to set aside the Labor Arbiter's decision based on its findings that the private respondents were denied due process considering that neither they nor their counsel was duly notified of the scheduled hearings except that which was set on February 8, 1984.

Imputing grave abuse of discretion amounting to lack or excess of jurisdiction to respondent NLRC for its questioned resolution, the petitioners filed this petition for certiorari with prayer for a temporary restraining order.

On the issue of due process, the petitioners maintain that on the basis of the bailiff return service (Petition, Annex "B") the Notification and Summons for the preliminary conference set on January 31, 1984 was duly received by respondent corporation's security guard on duty in lieu of Mr. Tomas Sian, Jr. who was not around; that when the private respondents' counsel signed the minutes of the postponed February 8, 1984 hearing, he became privy to the remarks stated thereon which read:

"Hearing is reset to the date hereunder stated (March 14, 1984) and for the respondent to file its position paper on or before this date. (March 14, 1984)." (Exhibit "A");

that, again, the notice of hearing for March 22, 1984 was duly received by the security guard on duty at respondent corporation's premises; and that the notice of hearing for April 9, 1984 was duly received by the secretary of private respondents' counsel. Thus, the petitioners argue that the private respondents were given ample opportunity to be heard but they opted to ignore the notices that were sent to them and cried foul only after the Labor Arbiter decided against their favor.

On the other hand, the private respondents aver that the Labor Arbiter never obtained jurisdiction over their persons and that they were denied procedural and substantive due process for lack of proper service of summons on them.

Due process in administrative proceedings entail the following "cardinal primary" requirements, to wit:

"(1) The right to a hearing which includes the right to present one's case and submit evidence in support

thereof; (2) the tribunal must consider the evidence presented; (3) the decision must have something to support itself; (4) the evidence must be substantial, and substantial evidence means such evidence as a reasonable mind might accept as adequate to support a conclusion; (5) the decision must be based on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected; (6) the tribunal or body or any of its judges must act on its or his own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate; (7) the board or body should in all controversial questions, render its decisions in such manner the parties to the proceeding can know the various issues involved, and the reason for the decision rendered." (See *Jose Rizal College v. National Labor Relations Commission*, 156 SCRA 27 [1987], citing *Doruelo v. Commission on Elections*, 133 SCRA 382 [1984]; *Ang Tibay v. Court of Industrial Relations*, 69 Phil. 635 [1940])

We agree with the Solicitor General's submission that the private respondents' claim of violation of due process, anchored on the allegation that they were not served any notice or summons is belied by the records and even by their own subsequent actuations. All the aforequoted "cardinal primary" requirements of due process are present in the case at bar.

The following instances undoubtedly show that the private respondents had knowledge of and ample opportunity to act on the petitioners' complaint, namely, (a) per Bailiff's Return Service of the Notification and Summons dated January 23, 1984, it appears that the said Notification and Summons had been served at respondent corporation's address, although respondent Tomas B. Sian, Jr. was not around then and the copy was received by the security guard on duty by the name of Mr. Tuico; (b) at the scheduled hearing on February 8, 1984, the private respondents' counsel on record, Atty. Piramide appeared and signed the minutes resetting the hearing; (c) the notice for the hearing on March 14, 1984 was received by the same security guard at the private respondents' premises; (d) the notice of hearing dated March 22, 1984 addressed to Atty. Piramide was duly received by his secretary and (e) the notice setting the hearing for April 9, 1984 was served on the respondents' counsel.

Five times, the respondents were ordered to appear and they ignored the notices. The alleged lack of due process has no basis.

It is an elementary rule that it is not the denial of the right to be heard but the denial of the opportunity to be heard that violates the due process clause. In the case of *Almoite v. Pacific Architects and Engineers, Inc., et al.*, (142 SCRA 623 [1986]), we held that:

"x x x In this case, the petitioner was given not only the opportunity to be heard, which he forfeited in the proceedings before the labor arbiter, but also the right to be heard, which he actually exercised through his various representations before the NLRC." (At page 628)

In the instant case, the private respondents had more than ample opportunity to be heard before the Labor Arbiter handling the case. Their counsel was even required to submit their position paper on or before the hearing set on March 14, 1984. However, all these opportunities had gone to waste for failure of both the private respondents and their counsel to act accordingly. The petitioners are correct in saying that the rights of lowly workers cannot be placed under the mercy of those who wilfully ignore and waive their right to be heard.

On the issue of seasonableness of the appeal to respondent NLRC, there is no question that the ten-day reglementary period to appeal a decision of the Labor Arbiter to the respondent Commission refers to calendar days, not working days. (*Firestone Tire and Rubber Company of the Philippines v. Lariosa*, 148 SCRA 187 [1987]; *Vir-Jen Shipping and Marine Services, Inc. v. National Labor Relations Commission*, 115 SCRA 347 [1982]) However, considering that in the case at bar, the last day of the respondents' period to appeal to the respondent NLRC fell on a Sunday, the filing of the appeal on March 25, 1985, although already the eleventh day, was still in accordance with the rules.

Hence, in the light of the foregoing, we reiterate our decision in the case of *San Miguel Corporation v. National Labor Relations Commission* (128 SCRA 180 [1984]) that the conclusions of the NLRC will not be upheld when these are tainted with reversible error.

After a careful review of the records of this case, we see no reason to disturb the factual findings of the Labor Arbiter which are amply supported by substantial evidence. We note with approval the following findings of the said labor official, to wit:

"The Commission after a thorough examination of all the facts and issues laid down in the instant case, is convinced that the suspension and consequent termination of the petitioners has been unfair and unjust considering that the petitioners had been faithful, loyal in the discharge of their duties to the company and had been efficient and productive in the sale of company products to the extent that petitioner Antonio Ajero had always been awarded citations for exemplary discharge and devotion to duty. The suspension and consequent termination of the petitioners by the respondents had been executed clearly not within the concept of Article 283 of the New Labor Code or Section 15 of Batas Pambansa Blg. 130 as amended. The dismissal was done with malice deliberately in bad faith considering that in the whole duration of their employment there was never even a reprimand for a misdeed committed, rendering the action of dismissal without legal, factual or justifiable basis. Certainly there is the imperative need that both petitioners in the instant case should be reinstated back to their former positions with full backwages including benefits without loss of seniority rights from the time they were unjustly dismissed until actual time of their reinstatement.

"The Commission has also observed in the proceedings, that the withholding of commissions and salaries due to and already earned by the petitioners to reimburse the payment of hospital bills of petitioner Jose Ajero cannot be justified for the reason that there was no consent on the part of the petitioners concerned who are brothers by consanguinity in violation of Article 116, Title II, Chapter IV of the New Labor Code of the Philippines. The hospitalization of petitioner Jose Ajero due to the accident he met happened while in his tour of duty as Driver and the employer-respondent in this case is bound by duty to furnish its employees with free medical care and also its duty for compulsory coverage as well as its employees in the State Insurance Fund all in relation to Articles 157; 161; 167k; 168 and 175 of the New Labor Code.

xxx xxx xxx

"Evidently on the basis of the records of this case, all money claims prayed for shall be awarded in favor of the petitioners which is due in the course of their employment and to award the petitioners moral and exemplary damages on the following circumstances: a) the claim for moral and exemplary damages has been pleaded b) it has been proved as it has not been disproved or controverted and that c) there was causal relation between the employer's acts and the damages and harm done to the petitioners. The moral and exemplary damages imposed is in accordance with, case entitled: *Eliseo Carreon v. Foodmine, Inc.*, NLRC Case Nos. NCR 12-7353-82, NLRC 3rd Div. Presiding Com. O. Medina and Coms. Gabriel Gatchalian and Miguel B. Varela, January 27, 1984." (Labor Arbiter's Decision, pp. 8-10; Rollo, pp. 35-37)

Inasmuch as the reinstatement of the petitioners' employees is no longer feasible considering that the respondent corporation had ceased to operate due to the conflagration that totally razed its buildings and offices, payment of separation pay and backwages is proper under the circumstances. Separation pay shall be computed pursuant to Sec. 4(a) Rule I, Book V of the Labor Code (See *Tajonera v. Lamaroza*, 110 SCRA 438 [1981]). The amount of backwages shall be computed from the date of the illegal dismissal up to the time when the reinstatement was still legally possible, that is, before November 6, 1983, the date when respondent corporation's premises were burned. (See *Pizza Inn/Consolidated Foods Corporation v. National Labor Relations*, 162 SCRA 773 [1988])

WHEREFORE, IN VIEW OF THE FOREGOING, this petition is hereby GRANTED. The questioned resolution of the respondent Commission is SET ASIDE and the decision of the Labor Arbiter dated February 15, 1985 is

REINSTATED with the MODIFICATION that since the dismissed petitioners-employees can no longer be reinstated, they shall be entitled to separation pay and backwages computed up to November 6, 1983 when the respondent corporation ceased to operate. The Temporary Restraining Order issued on July 18, 1988 is made PERMANENT.

SO ORDERED.

Feliciano, Bidin, and Cortes, JJ., concur.

Fernan, C.J., (Chairman), on official leave.

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