535 Phil. 198

THIRD DIVISION

[G.R. NO. 158620, October 11, 2006]

DEL MONTE PHILIPPINES, INC. AND WARFREDO C. BALANDRA, PETITIONERS, VS. MARIANO SALDIVAR, NENA TIMBAL, VIRGINIO VICERA, ALFREDO AMONCIO AND NAZARIO S. COLASTE, RESPONDENTS.

D E C I S I O N

TINGA, J.:

The main issue for resolution herein is whether there was sufficient cause for the dismissal of a rank-and-file employee effectuated through the enforcement of a closed-shop provision in the Collective Bargaining Agreement (CBA) between the employer and the union.

The operative facts are uncomplicated.

The Associated Labor Union (ALU) is the exclusive bargaining agent of plantation workers of petitioner Del Monte Philippines, Inc. (Del Monte) in Bukidnon. Respondent Nena Timbal (Timbal), as a rank-and-file employee of Del Monte plantation in Bukidnon, is also a member of ALU. Del Monte and ALU entered into a Collective Bargaining Agreement (CBA) with an effective term of five (5) years from 1 September 1988 to 31 August 1993.[1]

Timbal, along with four other employees (collectively, co-employees), were charged by ALU for disloyalty to the union, particularly for encouraging defections to a rival union, the National Federation of Labor (NFL). The charge was contained in a Complaint dated 25 March 1993, which specifically alleged, in relation to Timbal: "That on July 13, 1991 and the period prior or after thereto, said Nena Timbal personally recruited other bonafide members of the ALU to attend NFL seminars and has actually attended these seminars together with the other ALU members."[2] The matter was referred to a body within the ALU organization, ominously named "Disloyalty Board."

The charge against Timbal was supported by an affidavit executed on 23 March 1993 by Gemma Artajo (Artajo), also an employee of Del Monte. Artajo alleged that she was personally informed by Timbal on 13 July 1991 that a seminar was to be conducted by the NFL on the following day. When Artajo demurred from attending, Timbal assured her that she would be given honorarium in the amount of P500.00 if she were to attend the NFL meeting and bring new recruits. Artajo admitted having attended the NFL meeting together with her own recruits, including Paz Piquero (Piquero). Artajo stated that after the meeting she was given P500.00 by Timbal.[3]

Timbal filed an Answer before the Disloyalty Board, denying the allegations in the complaint and the averments in Artajo's Affidavit. She further alleged that her

husband, Modesto Timbal, had filed a complaint against Artajo for collection of a sum of money on 17 March 1993, or just six (6) days before Artajo executed her affidavit. She noted that the allegations against her were purportedly committed nearly two (2) years earlier, and that Artajo's act was motivated by hate and revenge owing to the filing of the aforementioned civil action.[4]

Nevertheless, the ALU Disloyalty Board concluded that Timbal was guilty of acts or conduct inimical to the interests of ALU, through a Resolution dated 7 May 1993.[5] It found that the acts imputed to Timbal were partisan activities, prohibited since the "freedom period" had not yet commenced as of that time. Thus, the Disloyalty Board recommended the expulsion of Timbal from membership in ALU, and likewise her dismissal from Del Monte in accordance with the Union Security Clause in the existing CBA between ALU and Del Monte. The Disloyalty Board also reached the same conclusions as to the co-employees, expressed in separate resolutions also recommending their expulsion from ALU.[6]

On 21 May 1993, the Regional Vice President of ALU adopted the recommendations of the Disloyalty Board and expelled Timbal[7] and her co-employees from ALU.[8] The ALU National President affirmed the expulsion.[9] On 17 June 1993, Del Monte terminated Timbal and her co-employees effective 19 June 1993, noting that the termination was "upon demand of [ALU] pursuant to Sections 4 and 5 of Article III of the current Collective Bargaining Agreement."[10]

Timbal and her co-employees filed separate complaints against Del Monte and/or its Personnel Manager Warfredo C. Balandra and ALU with the Regional Arbitration Branch (RAB) of the National Labor Relations Commission (NLRC) for illegal dismissal, unfair labor practice and damages.[11] The complaints were consolidated and heard before Labor Arbiter Irving Pedilla. The Labor Arbiter affirmed that all five (5) were illegally dismissed and ordered Del Monte to reinstate complainants, including Timbal, to their former positions and to pay their full backwages and other allowances, though the other claims and charges were dismissed for want of basis. [12]

Only Del Monte interposed an appeal with the NLRC.[13] The NLRC reversed the Labor Arbiter and ruled that all the complainants were validly dismissed.[14] On review, the Court of Appeals ruled that only Timbal was illegally dismissed.[15] At the same time, the appellate court found that Del Monte had failed to observe procedural due process in dismissing the co-employees, and thus ordered the company to pay P30,000.00 to each of the co-employees as penalties. The co-employees sought to file a Petition for Review[16] with this Court assailing the ruling of the Court of Appeals affirming their dismissal, but the petition was denied because it was not timely filed.[17]

On the other hand, Del Monte, through the instant petition, assails the Court of Appeals decision insofar as it ruled that Timbal was illegally dismissed. Notably, Del Monte does not assail in this petition the award of P30,000.00 to each of the co-employees, and the ruling of the Court of Appeals in that regard should now be considered final.

The reason offered by the Court of Appeals in exculpating Timbal revolves around the problematic relationship between her and Artajo, the complaining witness against her. As explained by the appellate court:

> However, the NLRC should have considered in a different light the situation of petitioner Nena Timbal. Timbal asserted before the NLRC, and reiterates in this petition, that the statements of Gemma Artajo, ALU's sole witness against her, should not be given weight because Artajo had an ax[e] to grind at the time when she made the adverse statements against her. Respondents never disputed the claim of Timbal that in the two (2) collection suits initiated by Timbal and her husband, Artajo testified for the defendant in the first case and she was even the defendant in the second case which was won by Timbal. We find it hard to believe that Timbal would so willingly render herself vulnerable to expulsion from the Union by revealing to an estranged colleague her desire to shift loyalty. The strained relationship between Timbal and Artajo renders doubtful the charge against the former that she attempted to recruit Artajo to join a rival union. Inasmuch as the respondents failed to justify the termination of Timbal's employment, We hold that her reinstatement to her former position in accordance with the September 27, 1996 decision of the Labor Arbiter is appropriate.[18]

The Labor Arbiter, in his favorable ruling to the dismissed employees, had noted that "complainant Timbal['s] x x x accuser has an axe to grind against her for an unpaid debt so that her testimony cannot be given credit."[19] The NLRC, in reversing the Labor Arbiter, did not see it fit to mention the circumstances of the apparent feud between Timbal and Artajo, except in the course of narrating Timbal's allegations.

However, in the present petition, Del Monte utilizes a new line of argument in justifying Timbal's dismissal. While it does not refute the contemporaneous ill-will between Timbal and Artajo, it nonetheless alleges that there was a second witness, Paz Piquero, who testified against Timbal before the Disloyalty Board.[20] Piquero had allegedly corroborated Artajo's allegations and positively identified Timbal as among those present during the seminar of the NFL conducted on 14 July 1992 and as having given her transportation money after the seminar was finished. Del Monte asserts that Piquero was a disinterested witness against Timbal.[21]

Del Monte also submits two (2) other grounds for review. It argues that the decision of the Labor Arbiter, which awarded Timbal full backwages and other allowances, was inconsistent with jurisprudence which held that an employer who acted in good faith in dismissing employees on the basis of a closed-shop provision is not liable to pay full backwages.[22] Finally, Del Monte asserts that it had, from the incipience of these proceedings consistently prayed that in the event that it were found with finality that the dismissal of Timbal and the others is illegal, ALU should be made liable to Del Monte pursuant to the CBA. The Court of Appeals is faulted for failing to rule upon such claim.

For her part, Timbal observes that Piquero's name was mentioned for the first time in Del Monte's Motion for Partial Reconsideration of the decision of the Court of Appeals.[23] She claims that both Piquero and Artajo were not in good terms with her after she had won a civil suit for the collection of a sum of money against their

immediate superior, one Virgie Condeza.[24]

The legality of Timbal's dismissal is obviously the key issue in this case. We are particularly called upon to determine whether at this late stage, the Court may still give credence to the purported testimony of Piquero and justify Timbal's dismissal based on such testimony.

It bears elaboration that Timbal's dismissal is not predicated on any of the just or authorized causes for dismissal under Book Six, Title I of the Labor Code,[25] but on the union security clause in the CBA between Del Monte and ALU. Stipulations in the CBA authorizing the dismissal of employees are of equal import as the statutory provisions on dismissal under the Labor Code, since "[a] CBA is the law between the company and the union and compliance therewith is mandated by the express policy to give protection to labor."[26] The CBA, which covers all regular hourly paid employees at the pineapple plantation in Bukidnon,[27] stipulates that all present and subsequent employees shall be required to become a member of ALU as a condition of continued employment. Sections 4 and 5, Article II of the CBA further state:

ARTICLE II

> **Section 4**. Loss of membership in the UNION shall not be a ground for dismissal by the Company except where loss of membership is due to:
>
> 1. Voluntary resignation from [ALU] earlier than the expiry date of this [CBA];
>
> 2. Non-payment of duly approved and ratified union dues and fees; and
>
> 3. Disloyalty to [ALU] in accordance with its Constitution and By-Laws as duly registered with the Department of Labor and Employment.
>
> **Section 5**. Upon request of [ALU], [Del Monte] shall dismiss from its service in accordance with law, any member of the bargaining unit who loses his membership in [ALU] pursuant to the provisions of the preceding section. [ALU] assumes full responsibility for any such termination and hereby agrees to hold [Del Monte] free from any liability by judgment of a competent authority for claims arising out of dismissals made upon demand of [ALU], and [the] latter shall reimburse the former of such sums as it shall have paid therefor. Such reimbursement shall be deducted from union dues and agency fees until duly paid.[28]

The CBA obviously adopts a closed-shop policy which mandates, as a condition of employment, membership in the exclusive bargaining agent. A "closed-shop" may be defined as an enterprise in which, by agreement between the employer and his employees or their representatives, no person may be employed in any or certain agreed departments of the enterprise unless he or she is, becomes, and, for the duration of the agreement, remains a member in good standing of a union entirely comprised of or of which the employees in interest are a part.[29] A CBA provision for a closed-shop is a valid form of union security and it is not a restriction on the

right or freedom of association guaranteed by the Constitution.[30]

Timbal's expulsion from ALU was premised on the ground of disloyalty to the union, which under Section 4(3), Article II of the CBA, also stands as a ground for her dismissal from Del Monte. Indeed, Section 5, Article II of the CBA enjoins Del Monte to dismiss from employment those employees expelled from ALU for disloyalty, *albeit* with the qualification "in accordance with law."

Article 279 of the Labor Code ordains that "in cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by [Title I, Book Six of the Labor Code]." Admittedly, the enforcement of a closed-shop or union security provision in the CBA as a ground for termination finds no extension within any of the provisions under Title I, Book Six of the Labor Code. Yet jurisprudence has consistently recognized, thus: "It is State policy to promote unionism to enable workers to negotiate with management on an even playing field and with more persuasiveness than if they were to individually and separately bargain with the employer. For this reason, the law has allowed stipulations for 'union shop' and 'closed shop' as means of encouraging workers to join and support the union of their choice in the protection of their rights and interests *vis-à-vis* the employer."[31]

It might be suggested that since Timbal was expelled from ALU on the ground of disloyalty, Del Monte had no choice but to implement the CBA provisions and cause her dismissal. Similarly, it might be posited that any tribunal reviewing such dismissal is precluded from looking beyond the provisions of the CBA in ascertaining whether such dismissal was valid. Yet deciding the problem from such a closed perspective would virtually guarantee unmitigated discretion on the part of the union in terminating the employment status of an individual employee. What the Constitution does recognize is that all workers, whether union members or not, are "entitled to security of tenure."[32] The guarantee of security of tenure itself is implemented through legislation, which lays down the proper standards in determining whether such right was violated.[33]

Agabon v. NLRC[34] did qualify that constitutional due process or security of tenure did not shield from dismissal an employee found guilty of a just cause for termination even if the employer failed to render the statutory notice and hearing requirement. At the same time, it should be understood that in the matter of determining whether cause exists for termination, whether under Book Six, Title I of the Labor Code or under a valid CBA, substantive due process must be observed as a means of ensuring that security of tenure is not infringed.

Agabon observed that due process under the Labor Code comprised of two aspects: "substantive, *i.e.*, the valid and authorized causes of employment termination under the Labor Code; and procedural, *i.e.*, the manner of dismissal."[35] No serious dispute arose in Agabon over the observance of substantive due process in that case, or with the conclusion that the petitioners therein were guilty of abandonment of work, one of the just causes for dismissal under the Labor Code. The controversy in *Agabon* centered on whether the failure to observe procedural due process, through the non-observance of the two-notice rule, should lead to the invalidation of the dismissals. The Court ruled, over the dissents of some Justices, that the failure by the employer to observe procedural due process did not invalidate the dismissals