352 Phil. 593

SECOND DIVISION

[G.R. No. 111934, April 29, 1998]

JUDY PHILIPPINES, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND VIRGINIA ANTIOLA, RESPONDENTS.

D E C I S I O N

MARTINEZ, J.:

This petition for *certiorari* assails the Decision[1] dated June 30, 1993 of the National Labor Relations Commission ordering petitioner to reinstate private respondent Virginia Antiola, with one year backwages; and the Order[2] dated August 30, 1993 denying the motion for reconsideration. The challenged ruling reversed the decision dated April 26, 1990 of Labor Arbiter Arturo V. Casuco dismissing the complaint for unfair labor practice and illegal dismissal for lack of merit.[3]

The facts which gave rise to this petition are as follows:

> Virginia Antiola was employed by petitioner Judy Philippines, Inc. in the latter's export business since January 1985. In the course of such employment, she worked as an assorter of baby infant dresses with a daily salary of ₱69.00 up to January 11, 1989.
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> On November 15, 1988, Virginia Antiola was directed by Marietta Elizon, her supervisor, to sort out baby infant dresses pursuant to an instruction sheet.
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> On January 4, 1989, petitioner, thru its Personnel Manager, Mrs. Lolita Agus, required private respondent to explain in writing why she should not be meted disciplinary sanctions for her erroneous assortment and packaging of 2,680 dozens of infant wear. On the same day, she submitted her written explanation, admitting her error and pleading that *"Kaya inihihingi ko po nang paumanhin ang aking pagkakamali."*[4]
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> Similarly on January 24, 1989, Marietta Elizon, private respondent's supervisor and Ester Rellesiva, the packer, received a memo requiring them to explain why they should not be penalized. Marietta Elizon submitted her explanation on February 2, 1989[5] and Ester Rellesiva on January 25, 1989.[6]
>
> Petitioner found private respondent guilty of negligence and she was dismissed from employment effective January 11, 1989. Marietta Elizon, on the other hand, was suspended from employment for one (1) month effective February 12, 1989 on the ground of negligence through command responsibility. Ester Rellesiva was found innocent on the ground that when she undertook the packing of the infant wear, the same were already sealed in black plastic bags and could no longer be checked.

The National Federation of Labor Union (NAFLU), in behalf of Virginia Antiola, filed a complaint for unfair labor practice and illegal dismissal against Judy Philippines, Inc. and Lolita Z. Agus.

NAFLU alleged that the dismissal of Virginia Antiola was unjustified because the infant wear erroneously assorted by Antiola should not have been shipped to the buyer had the company's supervisor and the buyer's quality comptroller exercised due diligence in the performance of their duties in ensuring that the goods were properly assorted. NAFLU assert that the act of petitioner in dismissing private respondent Antiola is a manipulative scheme designed to support its deliberate attempt to get rid of her from the service.

Petitioner countered that instead of following the written instruction of her supervisor, private respondent deviated therefrom which resulted in erroneous packaging of the infant wear. Thus, petitioner, avers that the dismissal of private respondent Antiola was valid and lawful, premised on the ground of negligence.

The Labor Arbiter's decision rendered on April 26, 1990 found the dismissal justified, *viz:*

"Upon careful study and perusal of the entire records of the instant case this office is inclined to uphold the act of the petitioner on dismissing individual complainant, as lawful, premise on the ground of fault and negligence causing an irreparable damage to the goodwill of the petitioners' business, especially considering that the latter is an export oriented entity. For more than one and one half months (1 1/2) from November 15, 1988 up to January 4, 1989 while she, individual complainant, was in the process of sorting the finished products she failed to notice the errors she had been committing. She had neglected her duty to check for herself her accomplishment whether or not it tallys with the written instruction of her supervisor in her possession. She admitted in her own written admission that she failed to check her errors and that she really committed the erroneous assortment since the very beginning.

The claim of complainants that the act of petitioner in dismissing individual claimant is discriminatory, tainted with unfair labor practice, on the ground that supervisor, Marietta Elizon, was made to suffer only one month suspension while individual claimant was punished too severely by dismissal, is untenable. The degree of responsibility between individual claimant and her supervisor can not be the same. The wrongful act was committed by complainant while her supervisor was merely remiss of her duty to supervise complainant. In the case of Edwin Estabillo, the buyer's quality controller, he is checking the quality of the infants wear and not the specification. In addition, he is not an employee of the herein petitioner under which the latter may impose appropriate discipline.

Concerning complainants claim that Virginia Antiola was not accorded due process before she was dismissed, records show that complainant Antiola was required to explain in writing within (20) hours why she should not be meted any disciplinary action for her negligence, that of having assorted the goods erroneously and contrary to the instruction given her. Complainant Antiola in compliance with the memorandum, submitted her written admission of guilt, which in turn became the basis of the petitioner in terminating her service. On the basis of the foregoing circumstance, this Labor Arbiter is of the view that due process mandated under

B.P. 130 is substantially satisfied. There is no need for a hearing because herein individual claimant has pleaded guilty.

While it is true that individual complainant has committed the infraction for the first time, as the records will show, and that she has voluntarily admitted guilt, it could not likewise be denied that respondent company suffered substantial losses brought about by individual complainant's wrongful act. She should have checked her accomplishment against the written instruction of her supervisor, before turning over the same to the packer for the packing. Let it be recalled that before turning over the assorted goods to the packer, it is already packed in black plastic bags presumably by individual complainant herself. Regrettably, the latter failed to exercise due diligence in the performance of her assigned tasks. Much as we are bound to uphold the right of workers to security of tenure, we cannot, as in this case, deny capital its prerogative to exercise its inherent power to discipline its workers.

WHEREFORE, premises considered, let the instant case be, as it is hereby DISMISSED for lack of merit.

SO ORDERED."[7]

Private respondent appealed to the National Labor Relations Commission. In reversing the decision of the labor arbiter, the NLRC said that:

"The most, *arguendo*, that may be said against complainant here is that in failing 'to exercise due diligence in the performance of her assigned task(s),' she committed 'Gross xxx neglect' in the performance of her duty. But pertinently, Article 282(b) of the Labor Code requires that to qualify as a valid cause for dismissal such neglect must not only be gross, it should be 'Gross and habitual neglect' in character.

Noting that the Labor Arbiter, himself admits that 'individual complainant has committed the infraction for the first time, as the records will show' (Decision, p.6 Record, p. 54), we thus rule that the penalty of dismissal is quite severe here.

Against the backdrop that the complainant was dismissed on January 12, 1989 and has been deprived by petitioner company of wages for about three years and four months, we opine that an award of reinstatement plus one year backwages will suffice.

WHEREFORE, the appealed decision is hereby set aside. The respondents are hereby directed to reinstate complainant with backwages limited to one year.

SO ORDERED."[8]

Petitioner's motion for reconsideration and/or appeal was denied in an Order dated August 30, 1993.

Hence, this petition for review, the petitioner contending that:

I

THE NLRC SERIOUSLY ERRED, AS A MATTER OF LAW, IN NOT HOLDING THAT UNDER ARTICLE 223 OF THE LABOR CODE THE APPEAL FILED BY PRIVATE RESPONDENT TO THE NATIONAL LABOR RELATIONS COMMISSION FROM THE DECISION OF LABOR ARBITER ARTURO V. CASUCO WAS FILED BEYOND THE REGLEMENTARY PERIOD AND

THAT THE SAID DECISION OF LABOR ARBITER CASUCO HAD ALREADY BECOME FINAL AND EXECUTORY.

II

ASSUMING FOR THE SAKE OF ARGUMENT THAT THE DECISION OF LABOR ARBITER ARTURO CASUCO HAD NOT YET BECOME FINAL AND EXECUTORY AND THAT PRIVATE RESPONDENT'S APPEAL COULD BE ENTERTAINED, THE NATIONAL LABOR RELATIONS COMMISSION SERIOUSLY ERRED AS A MATTER OF LAW IN HOLDING THAT THE OFFENSE COMMITTED BY PRIVATE RESPONDENT DID NOT CONSTITUTE A JUST CAUSE FOR DISMISSAL UNDER ARTICLE 282 OF THE LABOR CODE.

On the question of whether or not the appeal before the National Labor Relations Commission had been seasonably made, we rule in favor of private respondent.

Petitioner contends that private respondent received a copy of the Decision of Labor Arbiter Arturo Casuco on May 2, 1990. She had therefore, ten calendar days therefrom, or until May 12, 1990, to file her appeal to the NLRC. However, she filed her appeal only on May 14, 1990, or two days beyond the reglementary period.[9] Petitioner points out that the appeal was filed out of time and should be dismissed.

It is admitted that private respondent Antiola received the labor arbiter's decision on May 2, 1990. Under Article 223 of the Labor Code, as amended, the period to appeal to the Commission is ten (10) calendar days, to wit:

> Article 223. Appeal. - Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards or orders.

x x x x x."

Since the 10-day period provided in Article 223 of the Labor Code refers to ten calendar days and not to ten working days, this means that Saturdays, Sundays and Legal Holidays are not to be excluded, but included, in the computation of the 10-day period. This is in line with the objective of the law for speedy disposition of labor cases with the end in view of protecting the interest of the working man.[10] In subsequent cases, We ruled that if the tenth day to perfect an appeal from the decision of the Labor Arbiter to the NLRC falls on a Saturday, the appeal shall be made on the next working day,[11] as embodied in Section 1, Rule VI of the NLRC Rules of Procedure promulgated on January 14, 1992. This conclusion arrived at by the Court recognizes the fact that on Saturdays the offices of NLRC and certain post offices are closed.

Private respondent filed her appeal on the twelfth calendar day following receipt of the copy of the labor arbiter's decision, since the tenth day, May 12, 1990, is a Saturday.[12] Following the above enunciated doctrine, the filing of the appeal on May 14, 1990, the next working day, is considered to be within the reglementary period provided for by law, hence, seasonably made.

Even assuming *arguendo* that the appeal was filed beyond the period allowed by law, We have at times overlooked this particular procedural lapse. In the case of Firestone Tire and Rubber Co. v. Larosa[13] and reiterated in Chong Guan Trading vs. NLRC[14] this Court allowed the filing of appeals from the decisions of the labor arbiter to the NLRC, even if filed beyond the reglementary period, in the interest of justice. Thus, technical rules of procedure in labor cases are not to be strictly applied if the result