

THIRD DIVISION

[G.R. No. 143709, July 02, 2002]

CEFERINO P. BUHAIN, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, AND SWIFT FOOD, INC., RESPONDENTS.

DECISION

PUNO, J.:

This is a Petition for Review on Certiorari^[1] seeking the modification of the Resolution of the Court of Appeals dated June 13, 2000, insofar as the award of backwages is alleged to be not in accord with law and jurisprudence. It raises the issue of the period that should be included in determining the amount of backwages to be awarded to an employee illegally terminated from work.

The controversy stemmed from the dismissal of the petitioner Ceferino P. Buhain from the respondent company, Swift Foods Inc., after almost 18 years of gainful employment. He was initially hired by the respondent as a Chick Serviceman in 1978. He rose from the ranks and was eventually appointed to his current post as a Field Sales Supervisor in its Feeds Operations Group in 1988. His area of operation covered the province of Bulacan, and he had the following duties and responsibilities: the monitoring of account receivables, remittances of salesmen, and stock inventory as well as the opening of new account with customers.

On May 9, 1996, while petitioner was on a 14-day sick leave, an audit was conducted by a three-member team^[2] on his area of operation. The audit revealed that there was a failure to account for the unremitted collections and stock shortages amounting to P2,500,000.00 by one of the salesmen under his supervision, Roslin Enfestan. He denied any knowledge of the irregularity, claiming that, when he went on leave, there was no shortage or unaccounted stock.

On May 11, 1996, petitioner went to respondent's office as instructed. He was questioned by a company lawyer in the presence of one of the members of the audit team, and an auditor of the company. He was later made to execute and sign an affidavit under oath. It appears that Roslin Enfestan and a certain warehouseman executed their own sworn statements implicating him in the anomaly, but these were never presented to him.

For alleged gross violation of company rules and regulations and standard operating procedures, petitioner was placed under preventive suspension effective May 13, 1996. A week later, on the basis of the sworn statements of Enfestan and the warehouseman, his services were terminated.

The union, of which the petitioner is a member, requested for a grievance meeting on June 4, 1996 to discuss petitioner's dismissal and his possible reinstatement. No agreement, however, was reached in said meeting. In accordance with the terms of

the collective bargaining agreement, both parties gave their consent to undergo preventive mediation. On June 4, 1996, the case was brought before the National Conciliation and Mediation Board of the Department of Labor and Employment. Meanwhile, the respondent caused to be published a paid advertisement in the Philippine Daily Inquirer July 21, 1996 issue notifying the public that petitioner was one of the persons no longer connected with it.

On November 28, 1996, the parties agreed to submit the case for voluntary arbitration before Atty. Ramon T. Jimenez. After a series of preliminary conferences, the parties were required to submit their respective position papers, on the basis of which Atty. Jimenez rendered his decision, thus:

"IN VIEW OF THE FOREGOING, this Arbitrator finds that -

1. The dismissal of complainant Ceferino P. Buhain was illegal;
2. Complainant Buhain be reinstated to his former position without loss of seniority rights from date of his termination to the final resolution of this case;
3. Further, in view of the actual losses suffered by the complainant, that he be paid backwages and all benefits which he ought to have received from the date of preventive suspension until he is reinstated;
4. In view likewise of the humiliation, besmirched reputation and mental anguish complainant suffered before his peers and friends due to the wide publication of his separation, Respondent be required to pay damages in the amount of P50,000.00; and
5. For having been compelled to litigate this case, Respondent is required to pay attorney's fees equivalent to ten percent (10%) of the amount awarded by this Arbitrator.

SO ORDERED."^[3]

Respondent's motion was denied in a Resolution dated September 30, 1997.

On October 27, 1997, respondent sought relief with the Court of Appeals, filing therein a Petition for Review with Prayer for Preliminary Injunction and/or Temporary Restraining Order. The appellate court granted the application for writ of preliminary injunction, enjoining the Arbitrator from enforcing the July 10 Decision. The grant was conditioned on a bond of P80,000.00. On November 12, 1998, it rendered a Decision, affirming with modification the contested ruling, viz:

"WHEREFORE, the Decision appealed from is hereby AFFIRMED with MODIFICATION to the effect that the dispositive portion should read as follows:

"IN VIEW OF THE FOREGOING, this Arbitrator finds that --

1. The dismissal of the complainant Ceferino P. Buhain was illegal;

2. Complainant be awarded separation pay instead of reinstatement equivalent to one (1) month pay for every year of service computed from the time he was first employed until the full payment of the separation pay due him.
3. In view likewise of the humiliation, besmirched reputation and mental anguish complainant suffered before his peers and friends due to the wide publication of his separation, Respondent be required to pay damages in the amount of P50,000.00; and
4. For having been compelled to litigate this case, Respondent is required to pay attorney's fees equivalent to ten percent (10%) of the amount awarded by this Arbitrator.

SO ORDERED.'

SO ORDERED."^[4]

Both parties moved for reconsideration of the aforequoted Decision. Respondent disputed the conclusion of the appellate court on the illegality of petitioner's dismissal, as well as the grant of moral damages and attorney's fees. On the other hand, petitioner assailed the deletion of backwages awarded in the Arbitrator's decision. On June 13, 2000, the Court of Appeals promulgated the presently impugned Resolution, the dispositive portion of which states:

"WHEREFORE, the Decision appealed from is hereby AFFIRMED with MODIFICATION to the effect that the dispositive portion should read as follows:

'IN VIEW OF THE FOREGOING, this Arbitrator finds that --

1. The dismissal of the complainant Ceferino P. Buhain was illegal;
2. Complainant be awarded separation pay instead of reinstatement equivalent to one (1) month pay for every year of service computed from the time he was first employed until the full payment of the separation pay due him.
3. Further, in view of the actual losses suffered by the complainant, that he is paid backwages and all benefits which he ought to have received from date of preventive suspension until the time he is illegally dismissed;
4. In view likewise of the humiliation, besmirched reputation and mental anguish complainant suffered before his peers and friends due to the wide publication of his separation, Respondent be required to pay