

THIRD DIVISION

[G. R. No. 122279, November 22, 1999]

C & A CONSTRUCTION CO., INC. AND ATTY. MELECIO ARRANZ, JR., PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND LORNA E. PIMENTEL, RESPONDENTS.

D E C I S I O N

GONZAGA-REYES, J.:

Danilo S. Pimentel was the head of the maintenance division of C & A Construction Co. ("Company" for short). It was his duty, among others, to supervise the personnel belonging to the maintenance division.

On July 3, 1993, second hand spare parts of the Company's motor vehicle were discovered stolen from the maintenance area of the Company. Investigation disclosed that the said spare parts were pilfered by three employees of the maintenance division who admitted their guilt in separate statements. Informed by his co-employees that he was implicated in the theft that occurred on July 3, 1993 Pimentel addressed a letter to the General Manager dated July 21, 1993, stating that he had nothing to do with the theft committed by the employees in his division because he was allegedly sick at the time. Petitioner decided to dismiss Pimentel together with the three employees effective July 22, 1993.

On October 8, 1993 Pimentel filed a complaint with the NLRC (NCR Case No. 10-06304-93) for illegal dismissal, non-payment of legal holiday pay, indemnity pay, premium pay for holiday, for attorney's fees and violation of P. D. 851.

Pimentel died on October 22, 1993. His widow Lorna Pimentel was substituted as complainant.

It appears that on October 18, 1993, the Company gave Lorna Pimentel the amount of P15,000.00 as financial assistance, on account of which the latter executed a statement that she has no other claim against the company.

The Labor Arbiter ruled that Pimentel's dismissal was illegal, his liability for the theft of the Company's property was not sufficiently established. Additionally, it was held that the dismissal was effected without observance of due process, and in bad faith. However, the amount of P15,000.00 was deducted from the total monetary judgment. The Arbiter disposed as follows in its Decision of December 14, 1994.

"WHEREFORE, the respondents are hereby ordered to pay, jointly and severally substitute complainant Lorna Pimentel the total amount of fifty one thousand five hundred pesos (P51,500.00) representing backwages and exemplary damages as computed above."

The Company appealed to the NLRC arguing that:

I

IT IS ERROR ON THE PART OF THE LABOR ARBITER TO STILL TAKE COGNIZANCE OF SUBSTITUTE COMPLAINANT'S CLAIM FOR BACKWAGES OF COMPLAINANT AFTER THE FORMER HAS ALREADY WAIVED THE CLAIM THEREFOR.

II

IT IS ERROR FOR THE LABOR ARBITER TO HOLD THAT THE DISMISSAL OF THE COMPLAINANT WAS ILLEGAL AND WITHOUT DUE PROCESS.

III

IT IS NOT ONLY ERROR BUT GRAVE ABUSE OF DISCRETION ON THE PART OF THE LABOR ARBITER TO AWARD P50,000 AS EXEMPLARY DAMAGES.^[1]

The NLRC dismissed the appeal for being without merit. It held in its Resolution dated June 21, 1995-

"The appeal has to be dismissed.

Firstly, it is not correct, for respondents to claim that the complainant was validly dismissed because no less than their documentary evidence attached as Annexes "1" to "3" of their Position Paper (Record, pp. 117-118) show that the respondents were not able to establish the guilt of the complainant.

On respondents' argument that the complainant, through his surviving spouse, waived his backwages as a consequence of the latter's (surviving spouse) receiving P15,000.00 on October 18, 1993 (when the complainant died) we note that the complaint below was filed by complainant Danilo Salonga Pimentel on October 8, 1993. If his claims are to be extinguished by any waiver such as that brought about the wife's receiving [ten (10) after complainant filed the complaint) P15,000.00, such a waiver, to be valid, just the same necessitated the approval of the Arbiter below [St. Gothard Disco Pub & Restaurant vs. NLRC, 218 SCRA 327 (1993)]. With no such approval from Labor Arbiter Leda obtained and/ or appearing on record, the respondents cannot therefore validly invoke the defense of waiver."^[2]

Motion for Reconsideration of the above resolution having been denied, the

Company filed this petition for *certiorari*, claiming that the NLRC committed grave abuse of discretion in absolving Pimentel for liability for the theft of the Company's property, and in ruling that the waiver executed by Lorna Pimentel was invalid because it was not approved by the Labor Arbiter. The petitioner also assails the award of exemplary damages, as the dismissal of Pimentel was not done in a wanton, fraudulent, reckless or oppressive manner; at any rate the award of P50,000.00 is excessive and exorbitant, as the actual loss suffered by Pimentel was only P16,500.00.

In its comment, public respondent reiterates that Pimentel was dismissed without due process as there was no investigation conducted on Pimentel's involvement in the alleged theft of scrap materials, Pimentel learned of his dismissal only on July 28, 1993 when his co-workers visited him in his residence. Moreover, the evidence against Danilo consisted merely of the affidavits of his co-workers, none of which establish his participation in the theft. Besides, Pimentel was never given notice of the charges against him and it was only after his death that a final notice of termination was given to his widow. As regards the defense of waiver invoked by the petitioners, the quitclaim executed by Lorna Pimentel is not valid without the Labor Arbiter's approval.

Petitioner's reply to comment reiterates its earlier contention that the evidence against Pimentel is more than sufficient to establish his liability for pilferage of its property. It is claimed that Pimentel was able to submit his explanation even if there was no formal hearing. Moreover, the quitclaim was voluntarily executed by Lorna Pimentel because she was in dire need of money. The award of P50,000.00 exemplary damages, which was assailed for having been issued in grave abuse of discretion, was not controverted in public respondent's comment.

The parties filed their respective memorandum, essentially reiterating their previous arguments, while private respondent submitted its "memorandum by adaption" reproducing the comment it filed earlier.

The petition is partly meritorious.

Well-settled is the rule that findings of fact of the National Labor Relations Commission, affirming those of the Labor Arbiter, are entitled to great weight and will not be disturbed if they are supported by substantial evidence.^[3]

Petitioner Company attempted to prove the complicity of Pimentel in the theft of company materials by way of the following statements of Ricardo Mangahas, Eduardo Laureano, and the report of Ismael U. Gulani (annexes "1" to "3" of Position Paper of petitioner), to wit:

"Annex "1"

(As of July 3, 1993)

Sir.

Ako po si Ricardo Mangahas na nagsasabi ng pawang katotohanan tungkol po sa pyesang nawawala, ay isa po ako sa nagbenta non, sa