338 Phil. 386

FIRST DIVISION

[G.R. No. 118506, April 18, 1997]

NORMA MABEZA, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, PETER NG/HOTEL SUPREME, RESPONDENTS.
D E C I S I O N

KAPUNAN, J.:

This petition seeking the nullification of a resolution of public respondent National Labor Relations Commission dated April 28, 1994 vividly illustrates why courts should be ever vigilant in the preservation of the constitutionally enshrined rights of the working class. Without the protection accorded by our laws and the tempering of courts, the natural and historical inclination of capital to ride roughshod over the rights of labor would run unabated.

The facts of the case at bar, culled from the conflicting versions of petitioner and private respondent, are illustrative.

Petitioner Norma Mabeza contends that around the first week of May, 1991, she and her co-employees at the Hotel Supreme in Baguio City were asked by the hotel's management to sign an instrument attesting to the latter's compliance with minimum wage and other labor standard provisions of law.[1] The instrument provides:[2]

JOINT AFFIDAVIT

We, SYLVIA IGANA, HERMINIGILDO AQUINO, EVELYN OGOY, MACARIA JUGUETA, ADELAIDA NONOG, NORMA MABEZA, JONATHAN PICART and JOSE DIZON, all of legal ages (sic), Filipinos and residents of Baguio City, under oath, depose and say:

1. That we are employees of Mr. Peter L. Ng of his Hotel Supreme situated at No. 416 Magsaysay Ave., Baguio City;

2. That the said Hotel is separately operated from the Ivy's Grill and Restaurant;

3. That we are all (8) employees in the hotel and assigned in each respective shifts;

4. *That we have no complaints against the management of the Hotel Supreme as we are paid accordingly and that we are treated well.*

5. That we are executing this affidavit voluntarily without any force or intimidation and for the purpose of informing the authorities concerned and to dispute the alleged report of the Labor Inspector of the Department of Labor and Employment conducted on the said establishment on February 2, 1991.

IN WITNESS WHEREOF, we have hereunto set our hands this 7th day of May, 1991 at Baguio City, Philippines.

(Sgd.) (Sgd.) (Sgd.)

SYLVIA IGAMA HERMINIGILDO AQUINO EVELYN OGOY

(Sgd) (Sgd.) (Sgd.)

MACARIA JUGUETA ADELAIDA NONOG NORMA MABEZA

(Sgd) (Sgd.)

JONATHAN PICART JOSE DIZON

SUBSCRIBED AND SWORN to before me this 7th day of May, 1991, at Baguio City, Philippines.

Asst. City Prosecutor

Petitioner signed the affidavit but refused to go to the City Prosecutor's Office to swear to the veracity and contents of the affidavit as instructed by management. The affidavit was nevertheless submitted on the same day to the Regional Office of the Department of Labor and Employment in Baguio City.

As gleaned from the affidavit, the same was drawn by management for the sole purpose of refuting findings of the Labor Inspector of DOLE (in an inspection of respondent's establishment on February 2, 1991) apparently adverse to the private respondent.[3]

After she refused to proceed to the City Prosecutor's Office - on the same day the affidavit was submitted to the Cordillera Regional Office of DOLE - petitioner avers that she was ordered by the hotel management to turn over the keys to her living quarters and to remove her belongings from the hotel premises.[4] According to her, respondent strongly chided her for refusing to proceed to the City Prosecutor's Office to attest to the affidavit.[5] She thereafter reluctantly filed a leave of absence from her job which was denied by management. When she attempted to return to work on May 10, 1991, the hotel's cashier, Margarita Choy, informed her that she should not report to work and, instead, continue with her unofficial leave of absence. Consequently, on May 13, 1991, three days after her attempt to return to work, petitioner filed a complaint for illegal dismissal before the Arbitration Branch of the National Labor Relations Commission - CAR Baguio City. In addition to her complaint for illegal dismissal, she alleged underpayment of wages, non-payment of holiday pay, service incentive leave pay, 13th month pay, night differential and other benefits. The complaint was docketed as NLRC Case No. RAB-CAR-05-0198-91 and assigned to Labor Arbiter Felipe P. Pati.

Responding to the allegations made in support of petitioner's complaint for illegal dismissal, private respondent Peter Ng alleged before Labor Arbiter Pati that petitioner "surreptitiously left (her job) without notice to the management"[6] and that she actually abandoned her work. He maintained that there was no basis for

the money claims for underpayment and other benefits as these were paid in the form of facilities to petitioner and the hotel's other employees.[7] Pointing to the Affidavit of May 7, 1991, the private respondent asserted that his employees actually have no problems with management. In a supplemental answer submitted eleven (11) months after the original complaint for illegal dismissal was filed, private respondent raised a new ground, loss of confidence, which was supported by a criminal complaint for Qualified Theft he filed before the prosecutor's office of the City of Baguio against petitioner on July 4, 1991.[8]

On May 14, 1993, Labor Arbiter Pati rendered a decision dismissing petitioner's complaint on the ground of loss of confidence. His disquisitions in support of his conclusion read as follows:

> It appears from the evidence of respondent that complainant carted away or stole one (1) blanket, 1 piece bedsheet, 1 piece thermos, 2 pieces towel (Exhibits '9', '9-A,' '9-B,' '9-C' and '10' pages 12-14 TSN, December 1, 1992).
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> In fact, this was the reason why respondent Peter Ng lodged a criminal complaint against complainant for qualified theft and perjury. The fiscal's office finding a prima facie evidence that complainant committed the crime of qualified theft issued a resolution for its filing in court but dismissing the charge of perjury (Exhibit '4' for respondent and Exhibit 'B-7' for complainant). As a consequence, complainant was charged in court for the said crime (Exhibit '5' for respondent and Exhibit 'B-6' for the complainant).
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> With these pieces of evidence, complainant committed serious misconduct against her employer which is one of the just and valid grounds for an employer to terminate an employee (Article 282 of the Labor Code as amended).[9]

On April 28, 1994, respondent NLRC promulgated its assailed Resolution[10] affirming the Labor Arbiter's decision. The resolution substantially incorporated the findings of the Labor Arbiter.[11] Unsatisfied, petitioner instituted the instant special civil action for certiorari under Rule 65 of the Rules of Court on the following grounds:[12]

> 1. WITH ALL DUE RESPECT, THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION COMMITTED A PATENT AND PALPABLE ERROR AMOUNTING TO GRAVE ABUSE OF DISCRETION IN ITS FAILURE TO CONSIDER THAT THE ALLEGED LOSS OF CONFIDENCE IS A FALSE CAUSE AND AN AFTERTHOUGHT ON THE PART OF THE RESPONDENT-EMPLOYER TO JUSTIFY, ALBEIT ILLEGALLY, THE DISMISSAL OF THE COMPLAINANT FROM HER EMPLOYMENT;
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> 2. WITH ALL DUE RESPECT, THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION COMMITTED A PATENT AND PALPABLE ERROR

AMOUNTING TO GRAVE ABUSE OF DISCRETION IN ADOPTING THE RULING OF THE LABOR ARBITER THAT THERE WAS NO UNDERPAYMENT OF WAGES AND BENEFITS ON THE BASIS OF EXHIBIT "8" (AN UNDATED SUMMARY OF COMPUTATION PREPARED BY ALLEGEDLY BY RESPONDENT'S EXTERNAL ACCOUNTANT) WHICH IS TOTALLY INADMISSIBLE AS AN EVIDENCE TO PROVE PAYMENT OF WAGES AND BENEFITS;

3. WITH ALL DUE RESPECT, THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION COMMITTED A PATENT AND PALPABLE ERROR AMOUNTING TO GRAVE ABUSE OF DISCRETION IN FAILING TO CONSIDER THE EVIDENCE ADDUCED BEFORE THE LABOR ARBITER AS CONSTITUTING UNFAIR LABOR PRACTICE COMMITTED BY THE RESPONDENT.

The Solicitor General, in a Manifestation in lieu of Comment dated August 8, 1995 rejects private respondent's principal claims and defenses and urges this Court to set aside the public respondent's assailed resolution.[13]

We agree.

It is settled that in termination cases the employer bears the burden of proof to show that the dismissal is for just cause, the failure of which would mean that the dismissal is not justified and the employee is entitled to reinstatement.[14]

In the case at bar, the private respondent initially claimed that petitioner abandoned her job when she failed to return to work on May 8, 1991. Additionally, in order to strengthen his contention that there existed sufficient cause for the termination of petitioner, he belatedly included a complaint for loss of confidence, supporting this with charges that petitioner had stolen a blanket, a bedsheet and two towels from the hotel.[15] Appended to his last complaint was a suit for qualified theft filed with the Baguio City prosecutor's office.

From the evidence on record, it is crystal clear that the circumstances upon which private respondent anchored his claim that petitioner "abandoned" her job were not enough to constitute just cause to sanction the termination of her services under Article 283 of the Labor Code. For abandonment to arise, there must be concurrence of two things: 1) lack of intention to work;[16] and 2) the presence of overt acts signifying the employee's intention not to work.[17]

In the instant case, respondent does not dispute the fact that petitioner tried to file a leave of absence when she learned that the hotel management was displeased with her refusal to attest to the affidavit. The fact that she made this attempt clearly indicates not an intention to abandon but an intention to return to work after the period of her leave of absence, had it been granted, shall have expired.

Furthermore, while absence from work for a prolonged period may suggest abandonment in certain instances, mere absence of one or two days would not be enough to sustain such a claim. The overt act (absence) ought to unerringly point to the fact that the employee has no intention to return to work,[18] which is patently not the case here. In fact, several days after she had been advised to take an

informal leave, petitioner tried to resume working with the hotel, to no avail. It was only after she had been repeatedly rebuffed that she filed a case for illegal dismissal. These acts militate against the private respondent's claim that petitioner abandoned her job. As the Solicitor General in his manifestation observed:

> Petitioner's absence on that day should not be construed as abandonment of her job. She did not report because the cashier told her not to report anymore, and that private respondent Ng did not want to see her in the hotel premises. But two days later or on the 10th of May, after realizing that she had to clarify her employment status, she again reported for work. However, she was prevented from working by private respondents.[19]

We now come to the second cause raised by private respondent to support his contention that petitioner was validly dismissed from her job.

Loss of confidence as a just cause for dismissal was never intended to provide employers with a blank check for terminating their employees. Such a vague, all-encompassing pretext as loss of confidence, if unqualifiedly given the seal of approval by this Court, could readily reduce to barren form the words of the constitutional guarantee of security of tenure. Having this in mind, loss of confidence should ideally apply only to cases involving employees occupying positions of trust and confidence or to those situations where the employee is routinely charged with the care and custody of the employer's money or property. To the first class belong managerial employees, i.e., those vested with the powers or prerogatives to lay down management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees or effectively recommend such managerial actions; and to the second class belong cashiers, auditors, property custodians, etc., or those who, in the normal and routine exercise of their functions, regularly handle significant amounts of money or property. Evidently, an ordinary chambermaid who has to sign out for linen and other hotel property from the property custodian each day and who has to account for each and every towel or bedsheet utilized by the hotel's guests at the end of her shift would not fall under any of these two classes of employees for which loss of confidence, if ably supported by evidence, would normally apply. Illustrating this distinction, this Court, in Marina Port Services, Inc. vs. NLRC,[20] has stated that:

> To be sure, every employee must enjoy some degree of trust and confidence from the employer as that is one reason why he was employed in the first place. One certainly does not employ a person he distrusts. Indeed, even the lowly janitor must enjoy that trust and confidence in some measure if only because he is the one who opens the office in the morning and closes it at night and in this sense is entrusted with the care or protection of the employer's property. The keys he holds are the symbol of that trust and confidence.
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> By the same token, the security guard must also be considered as enjoying the trust and confidence of his employer, whose property he is safeguarding. Like the janitor, he has access to this property. He too, is charged with its care and protection.