337 Phil. 560

FIRST DIVISION

[G.R. No. 119253, April 10, 1997]

AMOR CONTI AND LEOPOLDO CRUZ, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISION), CORFARM HOLDINGS CORPORATION, CARLITO J. RABANG AND CIPRIANO Q. BARAYANG, RESPONDENTS.

D E C I S I O N

PADILLA, J.:

In this petition for *certiorari* under Rule 65 of the Rules of Court, petitioners Amor Conti and Leopoldo Cruz seek to annul 1) the decision, dated 24 November 1994, of the National Labor Relations Commission (NLRC) in NLRC-NCR-CA-007367-94 (NCR 00-02-00834-93) entitled "*Amor Conti and Leopoldo Cruz v. Corfarm Holdings Corporation, et. al.",* setting aside the labor arbiter's decision, dated 20 June 1994, declaring that herein petitioners were illegally dismissed from employment, and; 2) the resolution, dated 26 January 1995, denying petitioners' motion for reconsideration of said NLRC decision.

Private respondent *Corfarm* Holdings Corporation (*Corfarm,* for brevity) is a duly organized domestic corporation that operates and manages the Manila Electric Company *(MERALCO)* Commissary for the benefit of *MERALCO* employees. Private respondents Carlito J. Rabang and Cipriano Q. Barayang are the President and Vice President, respectively, of said corporation.

Petitioner Amor Conti was employed by respondent *Corfarm* as cashier on 2 February 1991. Petitioner Leopoldo Cruz was employed by the same respondent corporation as a warehouseman on 16 May 1991. Both Amor Conti and Leopoldo Cruz were subsequently promoted to the positions of Head of Commissary and Store Supervisor, respectively. In their respective employment contracts with *Corfarm,* it was stipulated that their employment shall be coterminous with the effectivity of the contract executed by and between Corfarm and *MERALCO* for the management of the latter's commissary (hereinafter referred to as the "management contract").

On 31 December 1992, said management contract between *Corfarm* and *MERALCO* expired. However, *Corfarm* continued to operate the *MERALCO* commissary despite the non-renewal of said contract.

On 13 January 1993, petitioners received a memorandum, dated 12 January 1993, from private respondents terminating their services effective on said date, allegedly for two reasons: 1) the expiration of their employment contracts, these being coterminous with the management contract between *Corfarm* and *MERALCO,* and; 2) the on-going evaluation of their past performances, and investigation of the internal auditor of Corfarm of certain anomalous transactions involving them (petitioners).

On 2 February 1993, petitioners filed with the arbitration branch of the NLRC a complaint for illegal dismissal against private respondents. On 20 June 1994, Labor Arbiter Facundo L. Leda rendered a decision, the dispositive part of which reads:

> "Wherefore, decision is hereby rendered declaring the complainants to have been illegally dismissed and the respondents ordered to reinstate them immediately to their former or substantially equivalent positions and to pay them jointly and severally, the total amount of One Hundred Thirty-three Thousand Four Hundred Sixty Pesos and 70/100 (P133,460.70) representing backwages and attorney's fees.
>
> So ordered."[1]

Private respondents appealed the aforementioned decision of the labor arbiter. On 24 November 1994, the NLRC promulgated a decision setting aside the labor arbiter's order and dismissing herein petitioners' complaint for lack of merit. Petitioners filed a motion for reconsideration of the NLRC decision, which motion was denied in a resolution dated 26 January 1995.

Hence, this petition where petitioners allege that public respondent NLRC gravely abused its discretion in 1) reversing the labor arbiter's decision finding the petitioners' dismissal to have been illegal for lack of due notice and hearing as required by law, and; 2) "in ignoring the documents and testimony contained in the record which support the labor arbiter's decision finding the petitioners without fault on the alleged acts attributed to them."

We find merit in this petition.

At the outset, it will be noted that the Office of the Solicitor General (OSG), in its "Manifestation and Motion in lieu of Comment", dated 19 June 1995, agreed with the findings of the labor arbiter that the petitioners were illegally dismissed, and prayed of this Court that the questioned NLRC decision dated 24 November 1994 and resolution dated 26 January 1995, be set aside.

Petitioners contend that they were denied due process when they were dismissed without a written notice (specifying the particular charges constituting the grounds for their dismissal), and a hearing, as required by law. They further contend that the memorandum dated 11 January 1993, supposedly issued by *Corfarm* to petitioners directing them "to explain why they should not be dismissed for alleged acts of negligence and carelessness" was never received by them. Besides, said memorandum did not specify the particular acts or omissions of petitioners. It merely stated that based on the results of the investigation conducted by *Corfarm's* internal audit staff, petitioners were found to have been negligent in the performance of their duties.

Petitioners' contentions are meritorious.

This Court has consistently held that the twin requirements of notice and hearing constitute essential elements of due process in the dismissal of employees.[2] As to the requirement of notice, it has been held that the employer must furnish the worker with two written notices before termination of employment can be legally

effected: (a) notice which apprises the employee of the particular acts or omissions for which his dismissal is sought, and; (b) subsequent notice which informs the employee of the employer's decision to dismiss him.[3]

With regard to the requirement of a hearing, this Court has held that the essence of due process is simply an opportunity to be heard,[4] and not that an actual hearing should always and indispensably be held.[5]

In the case at bar, neither notice nor hearing was afforded the petitioners. The records show that respondent Cipriano Barayang (Corfarm Vice-President), in his testimony, admitted that petitioners were not given written notice of the specific charges against them, but were only orally informed thereof.[6]

Furthermore, the records show that the audit report which contained the alleged acts or omissions of petitioners were submitted to respondent Carlito Rabang (Corfarm President) only on 13 January 1993, notably the very same date when petitioners were dismissed.[7] Thus, the testimony of one Salvador Ayes (Internal Auditor of Corfarm) reads as follows:

> "x x x x x
>
> Atty. Espinas: Did you know whether the President confronted these two persons?
>
> Witness: I know that the two persons were confronted.
>
> Atty. Espinas: When?
>
> Witness: On January 11.
>
> Atty. Espinas: With this audit report dated January 13?
>
> Witness: No, not with the audit report.
>
> Atty. Espinas: I was asking with this audit report dated January 13, where [sic] they confronted with that audit report.
>
> Witness: No, they were not confronted."[8]

Since petitioners were not furnished with a copy of said audit report prior to their dismissal, they were thus not given an opportunity to refute the findings stated therein.[9]

It is logical that, as petitioners contend, their dismissal was without cause, since the private respondents failed to substantiate their allegations of negligence and carelessness (in the procurement of certain supplies) on the part of petitioners. Indeed, the records show that private respondents failed to controvert petitioners' testimony that they were never apprised of any policy on procurement; nor their testimony that the questioned orders were first checked by the auditor, the accountant, and respondent Vice President Barayang himself; nor petitioners' allegation that no payment could be made without the signatures of the above-

mentioned officers.

Thus, the labor arbiter correctly ruled that:

"In fine, the evidence adduced tend to show that the complainants have not committed any irregularity to warrant their dismissal x x x ".[10]

In order that the willful disobedience (herein interpreted to include negligence in carrying out company policies) by the employee may constitute a just cause for terminating his employment, the orders, regulations, or instructions of the employer or his representative must be: 1) reasonable and lawful; 2) sufficiently known to the employee; and 3) in connection with the duties which the employee has been engaged to discharge.[11] (underscoring supplied).

And then, assuming *arguendo* that petitioners had indeed violated a company policy, still, this cannot justify so harsh a penalty as dismissal. It has been held that the dismissal of an employee due to an alleged violation of a company policy, where it was found that the violation was acquiesced in by said employee's immediate superiors and the policy violated had not always been adhered to by the management, is an act not amounting to a breach of trust; therefore, it is not a justification for said employee's dismissal.[12] (underscoring supplied).

In the case at bar, petitioner Amor Conti, during her direct examination, testified that since the time of her employment with *Corfarm,* no written policies governed their purchasing activity, nor was she required to prepare a canvass sheet for every purchase. Furthermore, as earlier noted, the fact that said questioned purchase orders had been approved and signed by petitioners' immediate superiors, including respondent Barayang himself, remains uncontroverted. Therefore, respondents' allegations of negligence and violation of company policy, made without substantial proof, cannot justify the dismissal of petitioners.

On the other hand, respondents contend that the termination of petitioners' services was likewise due to the expiration of their respective employment contracts, these being coterminous with the management contract between *Corfarm* and *MERALCO* which supposedly expired on 31 December 1992. This contention is untenable, as the evidence clearly shows otherwise. During his direct examination, respondent Barayang testified that even without the formal renewal of the contract between *Corfarm* and *MERALCO, Corfarm* continued to operate the latter's commissary. Thus,

> " x x x
>
> Atty. Espinas: In the memorandum of January 12, 1993 address(ed) to the complainant Conti, you stated that the contract between MERALCO and CHC was expired [sic] on December 31, 1992?
>
> Witness: That's right.
>
> Atty. Espinas: Has this contract renewed after December 12, 1992? (sic)
>
> Witness: It has not been renewed.