

## SECOND DIVISION

[ G.R. No. 105877, January 25, 1996 ]

**VALIANT MACHINERY AND METAL CORPORATION AND JIMMY  
LUA SING, PETITIONERS, VS. NATIONAL LABOR RELATIONS  
COMMISSION (FIRST DIVISION), ELENO C. PONCIANO AND  
FERDINAND TRIA, RESPONDENTS.**

### DECISION

**MENDOZA, J.:**

This is a petition for certiorari with prayer for preliminary injunction and/or restraining order to annul the decision of the National Labor Relations Commission (First Division) in NLRC NCR CASE No. 000808-90, reversing the decision of the Labor Arbiter and ordering petitioners to reinstate private respondents and pay them backwages equivalent to their salaries for three years.<sup>[1]</sup>

Private respondents Eleno Ponciano and Ferdinand Tria were machinists at a machine and foundry shop, the Valiant Machinery and Metal Corp., at Grace Park, Kalookan City. Ponciano was employed in January 1987, while Tria was hired on April 4, 1988. At the time of their separation on April 25, 1990, Ponciano was receiving a daily wage of P117.00, while Tria was receiving P95.00.

It appears that on April 18, 1990, the two obtained salary advances ("vale") from petitioner Lua Sing, president and general manager of the machine and foundry shop, and, that the next day, they were absent from work. They reported back for work the following day, April 20 and 21, 1990.

April 22 was a Sunday but, although the next day, April 23, Monday, was not a holiday, private respondents again did not report for work, taking advantage of a company rule that gave workers the option not to work on Mondays when there was no electricity in the area.

When they reported for work on April 24 and on April 25, private respondents claimed that they were not allowed to enter the company premises. On April 26, 1990 they filed complaints for illegal dismissal with the Department of Labor. In a joint affidavit submitted to the Labor Arbiter, they alleged:<sup>[2]</sup>

4. Without any reason at all and without giving any notice of termination, we were just barred from entering the place of work and were prohibited from working in the morning of April 25, 1990 when we reported for work on that day.

5. Without any hearing or semblance thereof, we were just terminated unlawfully and unceremoniously.

6. After its incorporation, Mr. Lua Sing started to dismiss his employees who were receiving high pay; in fact, some of those who were dismissed were paid their separation pay but there were other (sic) who were not so paid like us.

Petitioners denied the charge. They claimed that private respondents had asked for additional cash advances on April 20 and 21, 1990 but, as their request was denied, they went on an indefinite leave, ignoring petitioners' pleas not to abandon their work because they were badly needed in the factory. Petitioners claimed that, as a matter of fact, private respondents names were included in the payroll for April 1990.<sup>[3]</sup>

Private respondents in turn denied that they ever asked for additional salary advances on April 20 and 21, 1990 and that they went on an indefinite leave of absence because their request was denied. They claimed that petitioner Lua Sing's tactic was to force them to resign so that the company would not have to give separation pay.<sup>[4]</sup> It was charged that when the business was changed from single proprietorship into a corporation, the company laid off some highly-paid employees by giving them separation pay.

On the other hand, petitioners submitted the affidavit of its security guard, Bernardino Busbus, who claimed that Eleno Ponciano and Ferdinand Tria did not report for work during the period from April 23 to 29, 1990 and that they were not prevented from entering the company premises.<sup>[5]</sup>

The Labor Arbiter rendered a decision dismissing the private respondents complaint.<sup>[6]</sup> He found that private respondents were badly needed in the factory and it was improbable that they had been fired especially considering that they had been granted increases and cash advances. He gave credence instead to the testimony of the security guard, Bernardino Busbus, that private respondents had not been prevented from returning to work.

The private respondents appealed to the NLRC, which, on December 6, 1991, rendered a decision, reversing the Labor Arbiter's ruling and holding petitioners guilty of illegal dismissal. The NLRC ordered the reinstatement of the two employees to their former positions with full backwages and without loss of seniority rights. In the event reinstatement was not feasible, they were ordered granted separation pay with full backwages for three years, plus 10% of the total award as attorney's fees.<sup>[7]</sup>

The NLRC found that, as a matter of policy, the company really gave workers the choice not to report for work on Mondays because of power outage in 1990 in the area. It noted the absence of a written application for a leave which, in its opinion, belied petitioners' claim that private respondents had asked to be allowed to go on indefinite leave. It pointed out that the terms and conditions of employment in the company were such as to make it improbable that private respondents would abandon their jobs. The NLRC thought that private respondents had been maneuvered into a position where they had no choice but to resign so that the

company could have an excuse for not giving separation pay.

We wish also to point out that there was a change in the company's structure from a single proprietorship to that of a corporation resulting in the dismissal of some workers who were paid their separation pay, however, there are those who were not extended this benefit including complainants. This situation lead as to decipher a scheme wherein management manipulated and placed complainants in a very tight and hairline position where employer-employee relation could be deemed severed or terminated without being held answerable for additional expense in their removal. Complainants appear to have been pushed to the wall, so to speak, thus, in their reply affidavit they asserted that "had we not been aggrieved by the act of management especially Mr. Lua Sing, we would not have filed the case."<sup>[8]</sup>

The NLRC therefore held the petitioners guilty of constructive dismissal.

Petitioners moved for a reconsideration. On December 6, 1991, the NLRC modified its decision as to the amount of the monetary awards. Still unsatisfied, petitioners brought this petition.

Petitioners allege that the NLRC gravely abused its discretion by:

1. Reversing and setting aside the decision of the Honorable Labor Arbiter and holding that private respondents were illegally dismissed.
2. Ordering the reinstatement of private respondents plus full backwages and/or payment of separation pay plus full backwages.
3. Awarding attorney's fees considering that there was no factual and legal justification for the amount awarded.

The Court finds substantial evidence in support of the ruling of the NLRC that the private respondents were indeed dismissed without cause. While there was no outright or open termination of the services of the employees, there is reason to believe the company barred them from work because they were absent practically for one week when they were badly needed in the factory. During the week, from Wednesday, April 18 to Tuesday, April 24, 1990, they worked for two days only. That petitioners did not look kindly at this fact is suggested in the following portion of the comment of the Solicitor General:

Nonetheless, it cannot be ignored that private respondents suffered some form of harassment. There is no reason to believe that they did not want to report for work, considering that they were paid on a daily basis. They would not have filed the case for illegal dismissal unless they had some reason therefor. Their assertion that they were barred from working on