

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**CALTEX REFINERY EMPLOYEES
ASSOCIATION (CREA) and ARNELIO
M. CLARETE,**

Petitioners,

-versus-

**G.R. No. 102993
July 14, 1995**

**NATIONAL LABOR RELATIONS
COMMISSION (Third Division),
CALTEX PHILIPPINES, INC. and/or
EDGARDO C. CATAQUIS,**

Respondents.

X-----X

DECISION

QUIASON, J.:

SEPARATE OPINION:

PADILLA, J., dissenting:

This is a Petition for *Certiorari* under Rule 65 of the Revised Rules of Court to reverse the Resolution dated August 30, 1991 of the National Labor Relations Commission (NLRC) in Case No. L-000063 and its

Resolution dated October 15, 1991 denying the motion for reconsideration of the decision.

I

Petitioner Arnelio M. Clarete was hired by respondent Caltex Philippines, Inc. (Caltex) as Mechanic C on November 3, 1981. He was later promoted to the position of Mechanic B and assigned to the Mechanical/Metal Grades Section of respondent Caltex's refinery in San Pascual, Batangas.

According to Clarete, at about 4:00 P.M. on April 13, 1989, on his way to the refinery's main gate after completing a day's work at the Maintenance Area IV, he saw on a pile of rubbish a bottle of lighter fluid, which mechanics use to remove grease from their hands. He picked up the bottle and placed it in the basket attached to the handlebar of his bicycle with the intention of asking the security guard at the gate to allow him to bring it home.

Upon reaching the gate, he took the bottle of lighter fluid from the basket, punched out his time card at the Bundy clock and then asked Juan de Villa, the security guard on duty, permission to take home the bottle. Replying that he was not authorized to grant the permission sought, de Villa referred Clarete to Dominador Castillo, the security supervisor. When so approached, however, Castillo told Clarete to leave the bottle in his office. Clarete complied and left for home.

Respondent Caltex gave a different version of the incident: On said date, de Villa noticed a black bag which Clarete did not submit for inspection. When requested by de Villa to open the same for inspection, Clarete retorted that it was not necessary to inspect the bag as it contained only dirty clothes. Unconvinced, de Villa opened the bag and found a one-liter sample bottle filled with lighter fluid surreptitiously hidden inside in the sleeves of Clarete's working clothes, which, in turn, were covered by other clothes. When asked if he had a gate pass to bring the bottle out of the premises, Clarete replied that he did not secure a gate pass as the lighter fluid was for his personal use.

On April 18, 1989, Clarete received a letter from his immediate supervisor, requiring him to explain in writing why he should not be subjected to disciplinary action for violation of company rules and regulations. In his written explanation of April 20, 1989, Clarete stated: (1) that he had no intention of bringing the bottle of lighter fluid out of the company premises without the guard's permission; (2) that he did seek permission but was denied; and (3) that he left the bottle behind with the guard when told to do so.

On August 16, 1989, Clarete was charged with the crime of theft before the Municipal Trial Court of San Pascual, Batangas (Criminal Case No. 3331). On October 19, 1989, he received a letter from Antonio Z. Palad, Section Head, Mechanical/Metal Section, requiring him to explain why his services should not be terminated for cause in view of Criminal Case No. 3331 and his violation of the "policy on disciplinary action per G.M. Circular No. 484 of August 28, 1974, specifically '(f) Removing or attempting to remove Company property from the Refinery without authorization'" (Rollo, p. 58).

In reply, Clarete requested time to consult his lawyer, which request respondent Caltex granted on November 14, 1989. Clarete was given up to November 30, 1989 to submit his explanation. However, instead of submitting a written explanation, petitioner served a letter on Palad, requesting a formal investigation of the allegations against him, at the same time, invoking his right to be represented by the Union and his legal counsel. The request was granted and a hearing was scheduled on January 5, 1990. Said hearing, as well as a subsequent one, was however deferred upon the request of Clarete.

Believing that Clarete has been given enough time to consult his lawyer and to prepare his explanation, a final meeting was scheduled on February 27, 1990. At the said meeting, Clarete through counsel, requested a formal trial-type investigation of the case. A letter reiterating that request was addressed by Clarete's counsel to Palad on March 12, 1990. In his letter dated April 26, 1990, Palad denied the request on the ground that a trial-type hearing and confrontation of witnesses were not applicable to the company's administrative fact-finding investigation. Clarete was then given only up to May 4, 1990 to submit his written explanation. He finally did so on May 3, 1990.

In the meantime, on April 19, 1990, a decision was rendered in Criminal Case No. 3331, acquitting Clarete of the crime charged based on the insufficiency of the evidence to establish his guilt beyond reasonable doubt.

On August 20, 1990, Clarete was informed that his services were being terminated effective August 24, 1990 for “serious misconduct and loss of trust and confidence resulting from you having violated a lawful order of the Company, i.e., GM Circular No. 484 of 8-28-74 which gave notice that the Company considers ‘removing or attempting to remove Company property from the Refinery without authorization’ to be sufficiently serious that the erring employee be dismissed” (Rollo, p. 63). Clarete was placed under preventive suspension with pay upon notice up to the termination of his services on August 24, 1990.

On August 27, 1990, Clarete filed a complaint for illegal dismissal against private respondents Caltex and/or Edgardo C. Cataquio, in his capacity as Vice President of the Company with the Regional Arbitration Branch IV of the National Labor Relations Commission. On January 15, 1991, Labor Arbiter Joaquin A. Tanodra rendered a decision, finding Clarete neither culpable of theft nor of violating GM Circular No. 484 of August 28, 1974 as “his purpose in going to security guard de Villa was precisely to ask the latter’s permission to bring out the lighter fluid from the Refinery Compound” (Rollo, p. 27). He, therefore, directed the reinstatement of Clarete with full back wages which then totaled P40,081.60, without loss of seniority rights and other privileges.

On appeal by private respondents, NLRC rendered judgment on August 20, 1991, vacating the decision of the Labor Arbiter and entering a new one dismissing the complaint for lack of merit. NLRC gave credence to the version of respondent Caltex of the incident. It found no reason to doubt the veracity of the narration of the security guard, who was simply doing his job of protecting the property of private respondent and who was not shown to hold a personal grudge or ill motive to testify falsely against Clarete. Nonetheless, NLRC awarded Clarete financial assistance equivalent to one month salary for every year of service in the amount of P76,752.00.

Both parties moved for reconsideration — Clarete, on the ground that his dismissal was without valid cause as there was no violation of company rules, and private respondents on the ground that Clarete was not entitled to the award of financial assistance pursuant to the ruling in *Philippine Long Distance Telephone Company vs. National Labor Relations Commission*, 164 SCRA 671 (1988).

Hence, this petition filed by Clarete and The Caltex Refinery Employees Association, the exclusive bargaining representative of all rank and file employees of respondent Caltex.

II

Petitioners contend that NLRC acted with grave abuse of discretion calling for the exercise of this Court's corrective power. They maintain that Clarete's version of the incident is more in accord with logic and common experience. They further allege that loss of confidence, to be a valid ground for dismissal, must be based on just and duly substantiated causes. Since Clarete's position as mechanic is not one of trust and does not involve the production, safekeeping or even the handling of lighter fluid, his act of picking up the bottle of lighter fluid with the intention of asking permission to bring it home, cannot serve as basis for loss of confidence.

Respondent Caltex, on the other hand, asserts that G.M. Circular No. 484 was issued pursuant to its management prerogative to prescribe rules and regulations necessary for the conduct of its business and specifically to put a stop to rampant pilferage of company property by its employees, which has resulted not only in substantial losses in its operations but also in the perceptible breakdown in employee discipline. The findings of fact of NLRC, which are supported by evidence on record, show that petitioner Clarete attempted to remove a bottle of lighter fluid owned by respondent Caltex from the company premises; therefore, Clarete committed not only a serious misconduct but also a willful breach of trust and confidence reposed upon him in the performance of his duties. The loss of trust and confidence is not precluded by the fact that Clarete's position does not require the safekeeping or handling a lighter fluid. If this were the rule, an employee may then help himself to his employer's property

without fear of disciplinary action as long as the property taken was not entrusted to his care or is not related to his function.

III

The prerogative of employers to regulate all aspects of employment subject to the limitation of special laws is recognized. A valid exercise of management prerogative encompasses hiring, work assignments, working methods, time, place and manner of work, tools to be used, procedure to be followed, supervision of workers, working regulations, transfer of employees, discipline, dismissal and recall of workers (*San Miguel Corporation vs. Ubaldo*, 218 SCRA 293 [1993]). This prerogative must, however, be exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating the rights of the employees granted by law or contract (*Garcia vs. Manila Times*, 224 SCRA 399 [1993]). There are restrictions to guide the employers in the exercise of management prerogatives, particularly the right to discipline or dismiss employees, for both the Constitution and the law guarantee employees' security of tenure. Thus, employees may be dismissed only in the manner provided by law (*Radio Communications of the Phil., Inc. vs. National Labor Relations Commission*, 223 SCRA 656 [1993]). The right of the employer must not be exercised arbitrarily and without just cause. Otherwise, the constitutional mandate of security of tenure of the workers would be rendered nugatory (*China City Restaurant Corporation vs. National Labor Relations Commission*, 217 SCRA 443 [1993]).

We concur in NLRC's conclusion that the version of respondent Caltex of the incident under consideration is more credible. As correctly pointed by NLRC, there is no reason to doubt the veracity of the Report of Security Guard Juan de Villa dated April 14, 1989 and his Sinumpaang Salaysay dated April 21, 1989 as "he simply did what he was primarily tasked to do — to protect the company property and to apprehend misdeeds committed thereat — neither ill motive nor personal grudge against complainant-appellee (Clarete) was attributed to him to falsely testify against the former" (Rollo, p. 36). Undoubtedly, the lighter fluid is a property of private respondent and to take the same out of its premises without the corresponding gate

pass is a violation of company rules on theft and pilferage of company property.

But while Clarete may be guilty of violation of company rules, we find the penalty of dismissal imposed upon him by respondent Caltex to harsh and unreasonable. As enunciated in *Radio Communications of the Philippines, Inc. vs. National Labor Relations Commission*, supra, “such a penalty (of dismissal) must be commensurate with the act, conduct or omission imputed to the employee and imposed in connection with the employer’s disciplinary authority” (at p. 667). Even when there exist some rules agreed upon between the employer and employee on the subject of dismissal, we have ruled in *Gelmart Industries Phils., Inc. vs. National Labor Relations Commission*, 176 SCRA 295 (1989), that the same cannot preclude the State from inquiring on whether its rigid application would work too harshly on the employee.

Of the same mind is the Solicitor General who, invoking *Gelmart Industries*, prayed in his Manifestation, in lieu of Comment, that the assailed decision of NLRC be set aside and reinstatement of petitioner Clarete be ordered.

Indeed, considering that Clarete has no previous record in his eight years of service; that the value of the lighter fluid, placed at P8.00, is very minimal compared to his salary of P325.00 a day; that after his dismissal, he has undergone mental torture; that respondent Caltex did not lose anything as the bottle of lighter fluid was retrieved on time; and that there was no showing that Clarete’s retention in the service would work undue prejudice to the viability of employer’s operations or is patently inimical to its interest, we hold that the penalty of dismissal imposed on Clarete is unduly harsh and grossly disproportionate to the reason for terminating his employment. Hence, we find that the preventive suspension imposed upon private respondent is a sufficient penalty for the misdemeanor committed by petitioner (*Gelmart Industries Phils., Inc. vs. National Labor Relations Commission*, supra).

Since the dismissal took place on August 24, 1990, or after the passage of R.A. No. 6715, Clarete is entitled to reinstatement without loss of seniority rights and other privileges and his full back wages

inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement (Maranaw Hotels and Resorts Corporation vs. Court of Appeals, 215 SCRA 501 [1992]). As in the case of Pines City vs. National Labor Relations Commission, 224 SCRA 110 (1993) and Pines City Educational Center vs. National Labor Relations Commission, 227 SCRA 655 (1993), the Court stated that in ascertaining the total amount of back wages payable to them, we go back to the rule prior to the Mercury Drug rule that the total amount derived from employment elsewhere by the employee from the date of dismissal up to the date of reinstatement, if any, should be deducted therefrom (Itogon-Suyoc Mines, Inc. vs. Sangilo-Itogon Workers' Union, et al., 24 SCRA 873 [1968]). Inasmuch as petitioner received pay during his preventive suspension, the same must also be deducted from the monetary awards to be received by him.

WHEREFORE, the Resolution of National Labor Relations Commission dated August 30, 1991 is **REVERSED** and **SET ASIDE**. Respondent Caltex Phil., Inc. is **ORDERED** to reinstate petitioner Clarete to his former position of Mechanic B without loss of seniority rights and to pay him his full back wages inclusive of allowance, and other benefits or their monetary equivalent pursuant to Art. 279 of the Labor Code, as amended by Section 34 of R.A. No. 6715, computed from the time his compensation was withheld from him up to the time of his actual reinstatement deducting therefrom the amount received by petitioner during his preventive suspension and any income earned elsewhere during the period of dismissal if any.

No pronouncement as to costs.

SO ORDERED.

Davide, Jr., Bellosillo and Kapunan, JJ., concur.

SEPARATE OPINION

PADILLA, J., dissenting:

I reiterate my separate opinion in Pines City Educational Center, etc. vs. NLRC, et al., G.R. No. 96779, 10 November 1993, 227 SCRA 665, that after the passage of R.A. 6715, reinstatement of an employee unjustly dismissed from employment entitles him to full backwages (from the date of actual dismissal to date of actual reinstatement) without deducting therefrom salary or income received elsewhere during said period.