

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
THIRD DIVISION**

**VIRGILIO S. CARIÑO,**  
*Petitioner,*

*-versus-*

**G.R. No. 91086**  
**May 8, 1990**

**NATIONAL LABOR RELATIONS  
COMMISSION, HARRISON  
INDUSTRIAL CORPORATION and  
HARRISON INDUSTRIAL WORKERS'  
UNION,**

*Respondents.*

X-----X

**RESOLUTION**

**FELICIANO, J.:**

Petitioner asks the Court to declare null and void a Decision dated 26 May 1989 of the National Labor Relations Commission (NLRC) in NLRC Case No. NCR-00-09-03225-87 and to reinstate the Decision of the Labor Arbiter which the NLRC had modified.

Petitioner Cariño was the former President of private respondent Harrison Industrial Workers' Union ("Union"). Because he was widely believed to have grossly mismanaged Union affairs, the other officers of the Union formed an investigating committee and several

times invited petitioner Cariño to answer the complaints and charges against him. These charges were, principally:

1. Conspiring with the company during the negotiation of the CBA, resulting in, among other things, Article 22 entitled "Retirement" which provided for retirement pay of one (1) day's basic salary for every year of service.
2. Paying attorney's fees to Atty. Federico Leynes, Union counsel, out of Union funds without obtaining corresponding receipts therefor.
3. Unilaterally increasing the membership dues by an additional P17.00 per member in order to pay increased attorney's fees.
4. Concealing the CBA, failure to present and to explain the provisions of the same prior to ratification by the union membership.
5. Refusal to turn over the custody and management of Union funds to the Union treasurer.

Petitioner Cariño, however, failed to respond to the calls or invitations made by the investigating committee. Finally, the investigating committee called a general membership meeting on 11 June 1987. At this general membership meeting, the charges against petitioner were presented and discussed and the Union decided to file a petition for special election of its officers.

On 16 June 1987, a petition for special election of officers was filed by the Union with the Bureau of Labor Relations, Department of Labor and Employment. Several hearings were held at the BLR, always with due notice to petitioner Cariño; petitioner, however, failed to appear even once.

On 5 August 1987, a general Union membership meeting was held for the impeachment of Cariño. The general membership found Cariño guilty of the above-mentioned charges and decided to expel him from

the Union and to recommend his termination from employment. Atty. Federico Leynes also ceased to be counsel for the Union.

The Union accordingly informed private respondent Harrison Industrial Corporation (“Company”) of the expulsion of petitioner Cariño from the Union and demanded application of the Union Security Clause of the then existing Collective Bargaining Agreement (CBA) on 15 September 1987. Petitioner Cariño received a letter of termination from the Company, effective the next day.

Petitioner Cariño, now represented by Atty. Leynes, the former lawyer of the Union, filed a complaint for illegal dismissal with the Labor Arbiter.

In a Decision dated 7 October 1988, the Labor Arbiter held that there was no just cause for the dismissal of petitioner Cariño, none of the causes for suspension or dismissal of Union members enumerated in the Union’s Constitution and By-Laws being applicable to petitioner’s situation. The Labor Arbiter also held that the manner of petitioner’s dismissal had been in disregard of the requirements of notice and hearing laid down in the Labor Code. The Labor Arbiter ordered petitioner’s reinstatement with full backwages and payment of attorney’s fees, the monetary liability to be borne solidarily by the Company and the Union.

The Company and the Union went on appeal before the public respondent National Labor Relations Commission (NLRC). The NLRC, in a Decision promulgated on 26 May 1989, reversed the Labor Arbiter’s award. The NLRC noted that petitioner Cariño had merely denied the serious charges of mismanagement proffered against him, as set out in the affidavit of Dante Maroya, the incumbent President of the Union, which affidavit had been adopted by the Union as its position paper in the proceedings before the Labor Arbiter. The NLRC held Cariño’s silence as “tantamount to [an] admission of guilt” and as constituting the ultimate cause for his dismissal. However, the NLRC agreed with the Labor Arbiter’s finding that the manner of petitioner Cariño’s dismissal was inconsistent with the requirements of due process. The NLRC accordingly found the Company and the Union solidarily liable, “by way of penalty and financial assistance,” to petitioner Cariño for

payment of separation pay, at the rate of one-half (1/2) month's salary for each year of service.

In the instant Petition for Certiorari, petitioner Cariño basically seeks reinstatement of the Decision of the Labor Arbiter.

1. Petitioner Cariño contended that the NLRC had erred in taking cognizance of the Union's admittedly late appeal. We agree, however, with the Solicitor General that it is a settled principle of remedial law that reversal of a judgment obtained by a party appealing from it also benefits a co-party who had not appealed, or who had appealed out of time, where the rights and liabilities of both parties under the modified decision are so interwoven and inter-dependent as to be substantively inseparable.<sup>[1]</sup>

In the instant case, the NLRC could take cognizance of the late appeal of the Union, considering that the lawfulness of petitioner Cariño's dismissal by the Company could be determined only after ascertaining, among other things, the validity of the Union's act of expelling Cariño from its membership. In other words, the Company having seasonably appealed the Labor Arbiter's Decision and the Company's and the Union's liability being closely intertwined, the NLRC could properly take account of the Union's appeal even though not seasonably filed.

2. The NLRC in effect held that there had been just cause for petitioner Cariño's dismissal. The Court considers that the NLRC was correct in so holding, considering the following documentary provisions:

- a) Article II, Sections 4 and 5 of the Collective Bargaining Agreement between the Company and the Union provided as follows:

“SECTION 4. Any employee or worker obliged to join the UNION and/or maintain membership therein under the foregoing sections who fails to do so and/or maintain such membership shall be

dismissed without pay upon formal request of the UNION.

SECTION 5. Any UNION member may be suspended and/or expelled by the UNION for:

- a) Non-payment of dues or special assessment to the UNION.
- b) Organizing or joining another UNION or affiliating with a labor federation.
- c) Commission of a crime as defined by the Revised Penal Code against any UNION officer in relation to activities for and in behalf of the UNION.
- d) Participation in an unfair labor practice or any derogatory act against the UNION or any of its officers or members; and
- e) Involvement in any violation of this Agreement or the UNION's Constitution and By-Laws.

The UNION assumes full and complete responsibility for all dismissals of any worker/employee effected by the UNION and conceded in turn, by the COMPANY pursuant to the provisions hereof.

The UNION shall defend and hold the COMPANY free and harmless against any and all claims the dismissed worker/employee might bring and/or obtain from the Company for such dismissal.”<sup>[2]</sup> (Emphasis supplied)

b) The Constitution of the Union contains the following provisions:

- (i) Article X Section 5 reads:

“ARTICLE X — FEES, DUES, SPECIAL ASSESSMENTS, FINES AND OTHER PAYMENTS.

X X X

SECTION 5. Special assessments or other extraordinary fees such as for payment of attorney’s fees shall be made only upon a resolution duly ratified by the general membership by secret balloting.

X X X”<sup>[3]</sup>

(Emphasis supplied.)

(ii) Article XV entitled “Discipline” provides in Section 1 thereof that:

“SECTION 1. Any individual union members and/or union officer may be disciplined or expelled from the UNION by the Executive Board if the latter should find the former guilty of charges, based on the following grounds proffered officially against him:

- a) Non-payment of dues and other assessments for two (2) months;
- b) Culpable violation of the Constitution and By-Laws;
- c) Deliberate refusal to implement policies, rules and regulations, decisions and/or support the programs or projects of the UNION as laid down by its governing organs or its officers; and
- d) Any act inimical to the interest of the UNION and/or its officers, such

as but not limited to rumor mongering which tends to discredit the name and integrity of the UNION and/or its officers and creating or causing to create dissension among the UNION members thereof.”<sup>[4]</sup> (Emphasis supplied.)

Article XVI entitled “Impeachment and Recall” specified, in Section 1 thereof, the grounds for impeachment or recall of the President and other Union officers, in the following terms:

- “a) Committing or causing the commission directly or indirectly of acts against the interest and welfare of the UNION;
- b) Malicious attack against the UNION, its officers or against a fellow UNION officer or member;
- c) Failure to comply with the obligation to turn over and return to the UNION Treasurer within three (3) days are [sic] unexpected sum or sums of money received an authorized UNION purpose;
- d) Gross misconduct unbecoming of a UNION officer;
- e) Misappropriation of UNION funds and property. This is without prejudice to the filing of an appropriate criminal or civil action against the responsible officer or officers by any interested party;
- f) Willful violation of any provisions on this Constitution or rules, regulations, measures, resolution and decisions of the UNION.”<sup>[5]</sup> (Emphasis supplied.)

It appears to the Court that the particular charges raised against petitioner Cariño, set out earlier, reasonable fall within the underscored provisions of the foregoing documents. The NLRC impliedly recognized this when it described the charges of mismanagement against Cariño as serious.

The Labor Arbiter, however, also held that petitioner Cariño had been deprived of procedural due process on the union level in view of alleged failure to comply with the required procedure governing impeachment and recall proceedings set out in Article XVI, Section 2, of the Constitution of the Union. Article XVI, Section 2 reads as follows:

- “a) Impeachment or recall proceedings shall be initiated by a formal petition or resolution signed by at least thirty (30%) percent of all bona fide members of the UNION and addressed to the Chairman of the Executive board.
- b) The Board Chairman shall then convene a general membership meeting to consider the impeachment or recall of an officer or a group of officers, whether elective or appointive.
- c) UNION officers against whom impeachment or recall charges have been filed shall be given ample opportunity to defend themselves before any impeachment or recall vote is finally taken.
- d) A majority of all members of the UNION shall be required to impeach or recall UNION officers.
- e) The UNION officers impeached shall ipso facto be considered resigned or ousted from office and shall no longer be elected nor appointed to any position in the UNION.
- f) The decision of the general membership on the impeachment or recall charge shall be final and executory.”<sup>[6]</sup>

The NLRC, for its part, noted that while the prescribed procedural steps had not all been followed or complied with, still:

“Be that as it may, the general membership of the Union had spoken and decided to expel complainant as Union President and member and ultimately, requested the company to terminate his services per CBA prescription. It is worthy to note that the charges aired by Mr. Dante Maroya are serious enough for complainant to specifically respond and explain his side at the arbitral proceedings below. While it appears that due process was lacking at the plant level, this was cured by the arbitration process conducted by the Labor Arbiter. Despite the ample opportunity to explain his side, complainant failed to do so and instead, relied completely on alleged denial of due process. Complainant’s silence in this respect is tantamount to [an] admission of guilt.”<sup>[7]</sup> (Emphasis supplied.)

3. It is true that the impeachment of Cariño had not been initiated by a formal petition or resolution signed by at least thirty percent (30%) of all the bona fide members of the Union. A general meeting had, however, been called to take up the charges against petitioner Cariño, who had been given multiple opportunities to defend himself before the investigating committee of the Union officers and before the general Union members as well as before the Bureau of Labor Relations. Petitioner Cariño, however, chose to disregard all calls for him to appear and defend himself. At the general membership meeting, therefore, petitioner Cariño was impeached and ordered recalled by unanimous vote of the membership. Under these circumstances, failure to comply literally with step (a) of Article XVI Section 2 of the Union’s Constitution must be regarded as non-material: the prescribed impeachment and recall proceeding had been more than substantially complied with.

4. Turning now to the involvement of the Company in the dismissal of petitioner Cariño, we note that the Company upon being formally advised in writing of the expulsion of petitioner Cariño from the Union, in turn simply issued a termination letter to Cariño, the termination being made effective the very next day. We believe that the Company should have given petitioner Cariño an opportunity to explain his side of the controversy with the Union. Notwithstanding the Union's Security Clause in the CBA, the Company should have reasonably satisfied itself by its own inquiry that the Union had not been merely acting arbitrarily and capriciously in impeaching and expelling petitioner Cariño. From what was already discussed above, it is quite clear that had the Company taken the trouble to investigate the acts and proceedings of the Union, it could have very easily determined that the Union had not acted arbitrarily in impeaching and expelling from its ranks petitioner Cariño. The Company offered the excuse that the Union had threatened to go on strike if its request had not been forthwith granted. Assuming that such a threat had in fact been made, if a strike was in fact subsequently called because the Company had insisted on conducting its own inquiry, the Court considers that such would have been prima facie an illegal strike. The Company also pleaded that for it to inquire into the lawfulness of the acts of the Union in this regard would constitute interference by the Company in the administration of Union affairs. We do not believe so.

In Liberty Cotton Mills Worker's Union, et al vs. Liberty Cotton Mills, et al.<sup>[8]</sup> The Court held respondent company to have acted in bad faith in dismissing the petitioner workers without giving them an opportunity to present their side in their controversy with their own union.

“x x x

It is OUR considered view that respondent company is equally liable for the payment of backwages for having acted in bad faith in effecting the dismissal of the individual petitioners. Bad faith on the part of respondent company

may be gleaned from the fact that the petitioner workers were dismissed hastily and summarily. At best, it was guilty of a tortious act, for which it must assume solidary liability, since it apparently chose to summarily dismiss the workers at the union's instance secure in the union's contractual undertaking that the union would hold it "free from any liability" arising from such dismissal.

X X X

While respondent company, under the Maintenance of Membership provision of the Collective Bargaining Agreement, is bound to dismiss any employee expelled by PAFLU for disloyalty, upon its written request, this undertaking should not be done hastily and summarily. The company acted in bad faith in dismissing petitioner workers without giving them the benefit of a hearing. It did not even bother to inquire from the workers concerned and from PAFLU itself about the cause of the expulsion of the petitioner workers. Instead, the company immediately dismissed the workers on May 29, 1986 — in a span of only one day — stating that it had no alternative but to comply with its obligation under the Security Agreement in the Collective Bargaining Agreement, thereby disregarding the right of the workers to due process, self-organization and security of tenure.

X X X

The power to dismiss is a normal prerogative of the employer. However, this is not without limitations. The employer is bound to exercise caution in terminating the services of his employees especially so when it is made upon the request of a labor union pursuant to the Collective Bargaining Agreement, as in the instant case. Dismissals must not be arbitrary and capricious. Due process must be observed in dismissing an employee because it affects not only his position but also his means of livelihood. Employers should therefore respect and protect the rights of their employees, which include the right to labor.

x x x”<sup>[9]</sup>  
(Emphasis supplied.)

In *Manila Cordage Company vs. Court of Industrial Relations, et al.*,<sup>[10]</sup> the Court stressed the requirement of good faith on the part of the company in dismissing the complainant and in effect held that precipitate action in dismissing the complainant is indication of lack of good faith.

x x x

The contention of the petitioners that they acted in good faith in dismissing the complainants and, therefore, should not be held liable to pay their back wages has no merit. The dismissal of the complainants by the petitioners was precipitate and done with undue haste. Considering that the so-called ‘maintenance of membership’ clause did not clearly give the petitioners the right to dismiss the complainants if said complainants did not maintain their membership in the Manco Labor Union, the petitioners should have raised the issue before the Court of Industrial Relations in a petition for permission to dismiss the complainants.

x x x”<sup>[11]</sup>  
(Emphasis supplied.)

5. We conclude that the Company had failed to accord to petitioner Cariño the latter’s right to procedural due process. The right of an employee to be informed of the charges against him and to reasonable opportunity to present his side in a controversy with either the Company or his own Union, is not wiped away by a Union Security Clause or a Union Shop Clause in a CBA. An employee is entitled to be protected not only from a company which disregards his rights but also from his own Union the leadership of which could yield to the temptation of swift and arbitrary expulsion from membership and hence dismissal from his job.

The Court does not believe, however, that the grant of separation pay to petitioner Cariño was an appropriate response (there having been just cause for the dismissal) to the failure of the Company to accord him his full measure of due process. Since petitioner Cariño had clearly disdained answering the charges proffered against him within the Union, there was no reason to suppose that if the Company had held formal proceedings before dismissing him, he would have appeared in a Company investigation and pleaded his defenses, if he had any, against the charges against him. There was no indication that the Company had in fact conspired with the Union to bring about the expulsion and dismissal of petitioner Cariño; indeed, the Union membership believed it was Cariño who had conspired with the company in the course of negotiating the CBA. Considering all the circumstances of this case, and considering especially the nature of the charges brought against petitioner Cariño before his own Union, the Court believes that a penalty of P5,000 payable to petitioner Cariño should be quite adequate, the penalty to be borne by the Company and the Union solidarily. The Court also considers that because the charges raised against petitioner and unanswered by him have marked overtones of dishonesty, this is not a case where “financial (humanitarian) assistance” to the dismissed employee is warranted.<sup>[12]</sup>

**WHEREFORE**, the Court **DISMISSED** the Petition for Certiorari for lack of merit but **MODIFIED** the Decision of the public respondent National Labor Relations Commission dated 26 May 1989 by eliminating the grant of separation pay and in lieu thereof imposing a penalty of P5,000.00 payable to the petitioner to be borne solidarily by the Company and the Union. No pronouncement as to costs.

**Fernan, C.J., Gutierrez, Jr., Bidin and Cortes, JJ., concur.**

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[1] Government of the Philippines vs. Tizon, 20 SCRA 1186 (1967).

[2] Rollo, p. 82.

[3] Rollo, p. 151.

[4] Rollo, p. 153.

[5] Rollo, p. 154.

[6] Rollo, pp. 154-155.

- [7] Decision of the NLRC, Rollo, pp. 27-28.
- [8] 90 SCRA 391 (1979).
- [9] 90 SCRA at pp. 393-395.
- [10] 78 SCRA 398 (1977).
- [11] 78 SCRA at p. 410.
- [12] Philippine Long Distance Telephone Co., Inc. vs. NLRC, 164 SCRA 671 at p. 681 (1.988).

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