SUPREME COURT
THIRD DIVISION

SAFIRO CATALAN and GERARDO SERUE,
***Petitioners*,**

-versus-

G.R. No. 62391
June 8, 1992

TITO F. GENILO, RICARDO C. CASTRO, CECILIO T. SENO, FEDERICO O. BORROMEO, GRAPHIC ARTS SERVICES, INC.,
***Respondents*.**
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D E C I S I O N

BIDIN, *J.*:

This is a Petition for *Certiorari* to set aside the Resolution[1] of the National Labor Relations Commission in Case No. AB-9-3296-79 entitled "Zafiro Catalan and Gerardo Serue vs. Graphic Arts Services, Inc." affirming the Decision[2] of the Labor Arbiter sustaining the dismissal of the petitioners; and the subsequent Resolution[3] denying the petition for relief which was treated as a Motion for Reconsideration.

As gathered from the records, the following are the antecedent facts:

Petitioners were both regular employees of private respondent. Petitioner Safiro Catalan had been employed as Press-Helper for almost eight (8) months, and petitioner Gerardo Serue as Stitcher for more than one (1) year.

On July 11, 1979, respondent Graphic Arts Services (GASI, for brevity) filed applications for clearance to terminate the services of complainants (petitioners herein) Safiro Catalan and Gerardo Serue effective 25 July 1979. The reasons advanced by the company for their termination are embodied in its memorandum dated 9 July 1979, thus:

> "With regard to the incident last July 3, 1979 where you were found to be drunk within the company premises and for your consequent misbehavior, we find your written explanation to be unsatisfactory. Per our office rules and regulations which states:
>
> > "DRINKING IN THE COMPANY PREMISES OR COMING TO WORK UNDER THE INFLUENCE OF ALCOHOL IMMEDIATE DISMISSAL."
>
> "Management finds no alternative but to terminate your services upon obtaining clearance from the Ministry of Labor effective 25 July 1979.
>
> "Copy of this memorandum is being forwarded to the National Labor Relations Commission, Ministry of Labor."

On the same date 9 July 1979, a copy of the above-quoted memorandum was served to and received by petitioners.

On July 18, 1979, petitioners filed with the Ministry of Labor and Employment their complaint against respondent GASI for illegal dismissal.

On August 10, 1979, petitioners in support of their complaint filed their position paper alleging that they were dismissed without just cause. They narrated that in the morning of 3 July 1979, feeling tired and uneasy after working the whole night before (their workshift

being from 12:00 midnight to 8:00 a.m.), they decided to have a few bottles of beer at the sari-sari store about 50 meters away from the company compound. They sat down inside the store and talked to each other while drinking beer in order to relax before going home but they got engrossed in their conversation until they noticed it was almost time to have their lunch. Since no lunch was being served in the store, they headed for the company canteen. The security guard detailed at the gate of the company compound allowed them to enter, as it is a common practice for employees to enter the premises even when they are not on duty. On their way to the canteen, a brother of the General Manager saw them but the latter said nothing. Inside the canteen, they ordered food which they ate; however, before they could finish eating, the security guard came and ordered them to get out of the canteen allegedly by order of the management. Heeding the order, they stood up without finishing their food, paid for their order, left the canteen and went out of the premises. When they reported for work later, they were surprised to receive a memorandum from the management requiring them to explain why they should not be terminated from the service for violating Company Rules and Regulations. On 8 July 1979, they submitted their explanations; but, the next day 9 July 1979, they were served memoranda terminating their services effective 25 July 1979. In addition, the complainants (now petitioners) alleged that they were dismissed without prior clearance (Rollo, pp. 11-15, Annex "B" of the Petition).

Respondent company, on the other hand, alleged that on 3 July 1979 at about 2:00 o'clock in the afternoon, petitioners sneaked into the company compound drunk and proceeded to the company canteen where they caused trouble; that the company conducted an investigation, giving the complainants (now petitioners) the opportunity to explain their side; and that complainants were unable to give a satisfactory explanation, hence, the company filed an application for clearance to terminate complainants' service (Rollo, p. 17).

On January 15, 1980, respondent Labor Arbiter Tito Genilo rendered a decision dismissing the complaint, the dispositive portion of which reads:

> "WHEREFORE, in view of the foregoing, the instant complaint should be, as it is hereby, DISMISSED. However the company is directed to pay each of the complainants one-half (1/2) salary (sic) for every year of service.
>
> "So ordered."

On February 14, 1980, petitioners filed their appeal from the above-mentioned decision to the National Labor Relations Commission.

On July 14, 1981, the National Labor Relations Commission promulgated its resolution dismissing the appeal interposed by petitioners, pertinent portion of which reads:

> "It is observed, however, from a mere perusal of the subject appeal that herein appellants failed to comply with the requirements of a valid appeal; as prescribed under Sec. 3, Rule IX of the Rules of this Commission as well as under Sec. 9, Rule XIII, Book V of the Rules and Regulations Implementing the Labor Code. Noteworthy is the absence of any proof that a copy of the appeal was served the adverse party. Accordingly, with the present appeal not having been perfected for failure to comply with this basic requirement, the same cannot be given due course."
>
> "WHEREFORE, premises considered, the instant appeal should be, as it is hereby, DISMISSED.
>
> "So ordered."

On September 24, 1981, petitioners filed a petition for relief from Judgment/Resolution which was treated as a Motion for Reconsideration by the Commission.

Resolving the motion, the National Labor Relations Commission promulgated on 3 August 1982 its resolution, stating in part:

> "Mindful of the pronouncement of the Supreme Court that procedural technicality should yield to substantial justice (Luis Estrada vs. NLRC and Designs Ligna Incorporated, G.R. No.

> 57735, prom. on March 19, 1982) yet, We find, after a careful review of the record, no valid reasons exist to disturb the appealed decision. The findings and conclusions of the Labor Arbiter a quo are simply supported by the evidence as well as the law on the matter."
>
> "WHEREFORE, the instant petition should be, as it is hereby, Denied for lack of merit."

Hence, this instant petition.

After a brief exchange of pleadings, the Second Division of this Court in a resolution dated 20 April 1983 gave due course to the petition and required the parties to submit simultaneous memoranda which the parties complied with.

The main issue to be resolved in this case is whether or not the dismissal of petitioners from employment for alleged violation of company regulation is justified.

The outright dismissal of the petitioners is not justified.

The right of an employee to security of tenure is protected by the Constitution and must be so respected unless a just cause exists for the termination of employment. The determination of the existence and sufficiency of just cause must be exercised with fairness and in good faith.

In the case at bar, petitioners were dismissed from work for alleged violation of company rules and regulation specifically with regard to:

> "DRINKING IN THE COMPANY PREMISES OR COMING TO WORK UNDER THE INFLUENCE OF ALCOHOL."

Although it is well recognized that an employee's violation of lawful and reasonable rule or regulation constitute a just cause for his dismissal, it is equally true that the application of such rule must be done without abuse of discretion, for what is at stake here is not only the worker's position but also his means of livelihood (Remerco Garments Manufacturing Co. vs. Minister of Labor and Employment,

135 SCRA 167 [1985]; Bachiller vs. NLRC, 98 SCRA 393 [1980] reiterated in Kapisanan ng Manggagawa sa Camara Shoes vs. Camara Shoes, 111 SCRA 477 [1982]; Harvester Macleod vs. IAC, 149 SCRA 641 [1987]; Unitran/Bachelor Express, Inc. vs. Olvis, et al., 165 SCRA 254 [1988]).

As stated by the Labor Arbiter in his decision, the petitioners drank beer outside the company compound after their tour of duty. They only came to the company compound for the purpose of eating lunch at the company canteen. This fact is supported by the report of the company personnel who found Gerardo Serue eating in the said canteen.

As correctly pointed out by the Solicitor General:

> "It is thus clear, on the basis of the foregoing undisputed fact that the actual violation of the company rule or regulation was not committed. Petitioners did not drink beer in the company premises. Neither did they report for work under the influence of liquor because it was not their tour of duty then." (Rollo, p. 85, Memorandum for public respondent).

Moreover, petitioners' obedience in getting out of the company premises upon being ordered by the management is undoubtedly demonstrative of their deference to their superiors. This fact negates a deliberate intention on petitioners' part to defy the company's prescribed rules and regulations. This Court in the case of Batangas Laguna Tayabas Bus Co. vs. Court of Appeals, 71 SCRA 470 [1976] laid down this rule:

> "One of the fundamental duties of the employee is to yield obedience to all reasonable rules, orders and instructions of the employer, and willful or intentional disobedience thereof, as a general rule, justifies rescission of the contract of service and the peremptory dismissal of the employee. However, in order to constitute disobedience, the employee's conduct must have been willful or intentional, willfulness being characterized by a wrongful and perverse mental attitude rendering the employee's act inconsistent with proper subordination. The rules, instructions, commands in order to be a ground for

> discharge on the score of disobedience must be reasonable and lawful, must be known to the employee, and must pertain to the duties which the employees have been engaged to discharge." (Emphasis supplied).

It appears, therefore, that no actual violation has been shown and neither have petitioners committed acts inimical to the company's interest nor was there actual disruption of work flow nor a reasonable threat thereof was caused, assuming their presence in the canteen was under the influence of alcohol. As aforesaid, petitioners did not drink beer in the company premises. Neither did they report for work under the influence of liquor because it was not their tour of duty then.

Petitioners' outright dismissal appears unwarranted in the light of the following circumstances:

> Petitioners' employment record shows no previous violation of any company rule or regulation. Certainly, this first offense, if at all, maybe considered as a mere isolated incident not amounting to a willful disobedience or violation of company rule aforementioned. In such case, the outright imposition of the supreme penalty of dismissal is not commensurate with the misconduct or violation committed (Foodmine Inc. [Kentucky Fried Chicken] vs. NLRC, et al., 188 SCRA 748 [1990]). As a matter of fact, prior to its amendment, respondent's rules and regulations punished first offenders of intoxication with "warning/reprimand" only (Comment of respondent, p. 37, Rollo).

Secondly, private respondent has not suffered any material injury by reason of said intoxication. Neither has it interfered with the proper performance of the employee's duties since it was not their tour of duty at the time of its commission.

Thirdly, private respondent's claim that the petitioners created unusual noise under the state of drunkenness was not adequately substantiated nor affirmatively shown by the letter of the Acting Officer in charge of the Safeguard Security Detachment of the company-GASI who stated among others that when he proceeded to

the canteen to confront subject employees, he found Gerardo Serue, who smelled of liquor, eating therein while his companion Safiro Catalan was sleeping inside the employees' quarters under the influence of liquor.

In fact, the canteen personnel, who first noticed petitioners' state of intoxication made no report of any misdemeanor on their part. The worst description that could be made by the acting Assistant Officer in Charge, of Gerardo Serue's behavior was the latter's "rugged actuation." No specific report of the petitioners' shouting at the top of their voices, as alleged by respondent company, was made. Significantly, neither did the Labor Arbiter make any factual finding on this allegation.

Accordingly, petitioners' acts established by the evidence do not unequivocably show that they indeed violated the company rule or regulation in question. And even assuming that they did, the imposition of the penalty of dismissal in the name of discipline is too harsh a penalty and is not commensurate with the gravity of the said infraction (Foodmine Inc. vs. NLRC, supra; Visperas vs. Inciong, 119 SCRA 476 [1982]).

Failure of petitioners to furnish respondent company with a copy of their appeal as required in the NLRC Rules and the Implementing Rules of the Labor Code, is a mere technicality not warranting outright dismissal of a meritorious appeal (Estrada vs. NLRC, supra). Significantly, respondent NLRC never touched on the merits of the case in its resolution dated July 14, 1981 but merely relied on the "absence of proof that copy of the appeal was served the adverse party." It cannot be too strongly stressed, to follow Davis is his masterly work, Discretionary Justice, that where a decision may be made to rest on informed judgment rather than rigid rules, all equities of the case must be accorded their due weight (Remerco Garments Mfg. vs. MOLE, supra) and since the appealed decision was rendered with grave abuse of discretion amounting to lack or excess of jurisdiction, the same may be set aside under a WRIT OF *CERTIORARI*.

WHEREFORE, the Decision of the Labor Arbiter dated January 15, 1980 as well as the resolutions of the National Labor Relations

Commission dated July 14, 1981 and August 3, 1982 are hereby **SET ASIDE** for having been rendered with grave abuse of discretion. Petitioners are hereby ordered reinstated with three (3) years backwages.

SO ORDERED.

Gutierrez, Jr., Feliciano, Davide, Jr. and Romero, *JJ.*, concur.

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[1] Promulgated on July 14, 1981 by Ricardo Castro, presiding commissioner and Commissioners Cecilio T. Seno and Federico Borromeo.
[2] Promulgated on January 15, 1980 by Labor Arbiter Tito F. Genilo.
[3] Dated August 3, 1982.
