

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
EN BANC**

**GLOBE-MACKAY CABLE AND RADIO
CORPORATION,**

Petitioner,

-versus-

**G.R. No. 82511
March 3, 1992**

**NATIONAL LABOR RELATIONS
COMMISSION and IMELDA SALAZAR,**

Respondents.

X-----X

DECISION

ROMERO, J.:

For private respondent Imelda L. Salazar, it would seem that her close association with Delfin Saldivar would mean the loss of her job. In May 1982, private respondent was employed by Globe-Mackay Cable and Radio Corporation (GMCR) as general systems analyst. Also employed by petitioner as manager for technical operations' support was Delfin Saldivar with whom private respondent was allegedly very close.

Sometime in 1984, petitioner GMCR, prompted by reports that company equipment and spare parts worth thousands of dollars under the custody of Saldivar were missing, caused the investigation

of the latter's activities. The report dated September 25, 1984 prepared by the company's internal auditor, Mr. Agustin Maramara, indicated that Saldivar had entered into a partnership styled Concave Commercial and Industrial Company with Richard A. Yambao, owner and manager of Elecon Engineering Services (Elecon), a supplier of petitioner often recommended by Saldivar. The report also disclosed that Saldivar had taken petitioner's missing Fedders airconditioning unit for his own personal use without authorization and also connived with Yambao to defraud petitioner of its property. The airconditioner was recovered only after petitioner GMCR filed an action for replevin against Saldivar.^[1]

It likewise appeared in the course of Maramara's investigation that Imelda Salazar violated company regulations by involving herself in transactions conflicting with the company's interests. Evidence showed that she signed as a witness to the articles of partnership between Yambao and Saldivar. It also appeared that she had full knowledge of the loss and whereabouts of the Fedders airconditioner but failed to inform her employer.

Consequently, in a letter dated October 8, 1984, petitioner company placed private respondent Salazar under preventive suspension for one (1) month, effective October 9, 1984, thus giving her thirty (30) days within which to explain her side. But instead of submitting an explanation, three (3) days later or on October 12, 1984, private respondent filed a complaint against petitioner for illegal suspension, which she subsequently amended to include illegal dismissal, vacation and sick leave benefits, 13th month pay and damages, after petitioner notified her in writing that effective November 8, 1984, she was considered dismissed "in view of (her) inability to refute and disprove these findings."^[2]

After due hearing, the Labor Arbiter in a decision dated July 16, 1985, ordered petitioner company to reinstate private respondent to her former or equivalent position and to pay her full backwages and other benefits she would have received were it not for the illegal dismissal. Petitioner was also ordered to pay private respondent moral damages of P50,000.00.^[3]

On appeal, public respondent National Labor Relations Commission in the questioned resolution dated December 29, 1987 affirmed the aforesaid decision with respect to the reinstatement of private respondent but limited the backwages to a period of two (2) years and deleted the award for moral damages.^[4]

Hence, this petition assailing the Labor Tribunal for having committed grave abuse of discretion in holding that the suspension and subsequent dismissal of private respondent were illegal and in ordering her reinstatement with two (2) years' backwages.

On the matter of preventive suspension, we find for petitioner GMCR.

The investigative findings of Mr. Maramara, which pointed to Delfin Saldivar's acts in conflict with his position as technical operations manager, necessitated immediate and decisive action on any employee closely associated with Saldivar. The suspension of Salazar was further impelled by the discovery of the missing Fedders airconditioning unit inside the apartment private respondent shared with Saldivar. Under such circumstances, preventive suspension was the proper remedial recourse available to the company pending Salazar's investigation. By itself, preventive suspension does not signify that the company has adjudged the employee guilty of the charges she was asked to answer and explain. Such disciplinary measure is resorted to for the protection of the company's property pending investigation of any alleged malfeasance or misfeasance committed by the employee.^[5]

Thus, it is not correct to conclude that petitioner GMCR had violated Salazar's right to due process when she was promptly suspended. If at all, the fault lay with private respondent when she ignored petitioner's memorandum of October 8, 1984 "giving her ample opportunity to present (her) side to the Management." Instead, she went directly to the Labor Department and filed her complaint for illegal suspension without giving her employer a chance to evaluate her side of the controversy.

But while we agree with the propriety of Salazar's preventive suspension, we hold that her eventual separation from employment was not for cause.

What is the remedy in law to rectify an unlawful dismissal so as to “make whole” the victim who has not merely lost her job which, under settled jurisprudence, is a property right of which a person is not to be deprived without due process, but also the compensation that should have accrued to her during the period when she was unemployed?

Art. 279 of the Labor Code, as amended, provides:

“Security of Tenure. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, 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.”^[6] (Emphasis supplied).

Corollary thereto are the following provisions of the Implementing Rules and Regulations of the Labor Code:

“Sec. 2. Security of Tenure. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause as provided in the Labor Code or when authorized by existing laws.

Sec. 3. Reinstatement. — An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and to backwages.”^[7] (Emphasis supplied)

Before proceeding any further, it must be recalled that the present Constitution has gone further than the 1973 Charter in guaranteeing vital social and economic rights to marginalized groups of society, including labor. Given the pro-poor orientation of several articulate Commissioners of the Constitutional Commission of 1986, it was not surprising that a whole new Article emerged on Social Justice and Human Rights designed, among other things, to “protect and enhance

the right of all the people to human dignity, reduce social, economic and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.”^[8]

Proof of the priority accorded to labor is that it leads the other areas of concern in the Article on Social Justice, viz., Labor ranks ahead of such topics as Agrarian and Natural Resources Reform, Urban Land Reform and Housing, Health, Women, Role and Rights of People’s Organizations and Human Rights.^[9]

The opening paragraphs on Labor state:

“The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all. It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.”^[10] (Emphasis mine)

Compare this with the sole provision on Labor in the 1973 Constitution under the Article on Declaration of principles and State Policies that provides:

“Sec. 9. The State shall afford protection to labor, promote full employment and equality in employment, ensure equal work opportunities regardless of sex, race, or creed, and regulate the relations between workers and employers. The State shall ensure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work. The State may provide for compulsory arbitration.”^[11]

To be sure, both Charters recognize “security of tenure” as one of the rights of labor which the State is mandated to protect. But there is no gainsaying the fact that the intent of the framers of the present Constitution was to give primacy to the rights of labor and afford the sector “full protection,” at least greater protection than heretofore

accorded them, regardless of the geographical location of the workers and whether they are organized or not.

It was then CONCOM Commissioner, now Justice Hilario G. Davide, Jr., who substantially contributed to the present formulation of the protection to labor provision and proposed that the same be incorporated in the Article on Social Justice and not just in the Article on Declaration of Principles and State Policies “in the light of the special importance that we are giving now to social justice and the necessity of emphasizing the scope and role of social justice in national development.”^[12]

If we have taken pains to delve into the background of the labor provisions in our Constitution and the Labor Code, it is but to stress that the right of an employee not to be dismissed from his job except for a just or authorized cause provided by law has assumed greater importance under the 1987 Constitution with the singular prominence labor enjoys under the article on Social Justice. And this transcendent policy has been translated into law in the Labor Code. Under its terms, where a case of unlawful or unauthorized dismissal has been proved by the aggrieved employee, or on the other hand, the employer whose duty it is to prove the lawfulness or justness of his act of dismissal has failed to do so, then the remedies provided in Article 279 should find application. Consonant with this liberalized stance *vis-a-vis* labor, the legislature even went further by enacting Republic Act No. 6715 which took effect on March 2, 1989 that amended said Article to remove any possible ambiguity that jurisprudence may have generated which watered down the constitutional intent to grant to labor “full protection.”^[13]

To go back to the instant case, there being no evidence to show an authorized, much less a legal, cause for the dismissal of private respondent, she had every right, not only to be entitled to reinstatement, but as well, to full backwages.^[14]

The intendment of the law in prescribing the twin remedies of reinstatement and payment of backwages is, in the former, to restore the dismissed employee to her status before she lost her job, for the dictionary meaning of the word “reinstate” is “to restore to a state, condition, position, etc. from which one had been removed”^[15] and in

the latter, to give her back the income lost during the period of unemployment. Both remedies, looking to the past, would perforce make her “whole.”

Sadly, the avowed intent of the law has at times been thwarted when reinstatement has not been forthcoming and the hapless dismissed employee finds himself on the outside looking in.

Over time, the following reasons have been advanced by the Court for denying reinstatement under the facts of the case and the law applicable thereto; that reinstatement can no longer be effected in view of the long passage of time (22 years of litigation) or because of the realities of the situation;^[16] or that it would be “inimical to the employer’s interest;”^[17] or that reinstatement may no longer be feasible;^[18] or, that it will not serve the best interests of the parties involved;^[19] or that the company would be prejudiced by the workers’ continued employment;^[20] or that it will not serve any prudent purpose as when supervening facts have transpired which make execution on that score unjust or inequitable^[21] or, to an increasing extent, due to the resultant atmosphere of “antipathy and antagonism” or “strained relations” or “irretrievable estrangement” between the employer and the employee.^[22] In lieu of reinstatement, the Court has variously ordered the payment of backwages and separation pay^[23] or solely separation pay.^[24]

In the case at bar, the law is on the side of private respondent. In the first place, the wording of the Labor Code is clear and unambiguous: “An employee who is ‘unjustly dismissed from work shall be entitled to reinstatement and to his full backwages.’”^[25] Under the principles of statutory construction, if a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This plain-meaning rule or *verba legis* derived from the *maxim index animi sermo est* (speech is the index of intention) rests on the valid presumption that the words employed by the legislature in a statute correctly express its intent or will and preclude the court from construing it differently.^[26] The legislature is presumed to know the meaning of the words, to have used words advisedly, and to have expressed its intent by the use of such words as are found in the statute.^[27] *Verba legis non est recedendum*, or from the words of a statute there should be no departure. Neither does the

provision admit of any qualification. If in the wisdom of the Court, there may be a ground or grounds for non- application of the above-cited provision, this should be by way of exception, such as when the reinstatement may be inadmissible due to ensuing strained relations between the employer and the employee.

In such cases, it should be proved that the employee concerned occupies a position where he enjoys the trust and confidence of his employer; and that it is likely that if reinstated, an atmosphere of antipathy and antagonism may be generated as to adversely affect the efficiency and productivity of the employee concerned.

A few examples will suffice to illustrate the Court's application of the above principle: where the employee is a Vice-President for Marketing and as such, enjoys the full trust and confidence of top management;^[28] or is the Officer-In-Charge of the extension office of the bank where he works;^[29] or is an organizer of a union who was in a position to sabotage the union's efforts to organize the workers in commercial and industrial establishments;^[30] or is a warehouseman of a non-profit organization whose primary purpose is to facilitate and maximize voluntary gifts by foreign individuals and organizations to the Philippines;^[31] or is a manager of its Energy Equipment Sales.^[32]

Obviously, the principle of "strained relations" cannot be applied indiscriminately. Otherwise, reinstatement can never be possible simply because some hostility is invariably engendered between the parties as a result of litigation. That is human nature.^[33]

Besides, no strained relations should arise from a valid and legal act of asserting one's right; otherwise an employee who shall assert his right could be easily separated from the service, by merely paying his separation pay on the pretext that his relationship with his employer had already become strained.^[34]

Here, it has not been proved that the position of private respondent as systems analyst is one that may be characterized as a position of trust and confidence such that if reinstated, it may well lead to strained relations between employer and employee. Hence, this does

not constitute an exception to the general rule mandating reinstatement for an employee who has been unlawfully dismissed.

On the other hand, has she betrayed any confidence reposed in her by engaging in transactions that may have created conflict of interest situations? Petitioner GMCR points out that as a matter of company policy, it prohibits its employees from involving themselves with any company that has business dealings with GMCR. Consequently, when private respondent Salazar signed as a witness to the partnership papers of Concave (a supplier of Ultra which in turn is also a supplier of GMCR), she was deemed to have placed herself in an untenable position as far as petitioner was concerned.

However, on close scrutiny, we agree with public respondent that such a circumstance did not create a conflict of interests situation. As a system analyst, Salazar was very far removed from operations involving the procurement of supplies. Salazar's duties revolved around the development of systems and analysis of designs on a continuing basis. In other words, Salazar did not occupy a position of trust relative to the approval and purchase of supplies and company assets.

In the instant case, petitioner has predicated its dismissal of Salazar on loss of confidence. As we have held countless times, while loss of confidence or breach of trust is a valid ground for termination, it must rest on some basis which must be convincingly established.^[35] An employee may not be dismissed on mere presumptions and suppositions. Petitioner's allegation that since Salazar and Saldivar lived together in the same apartment, it "presumed reasonably that complainant's sympathy would be with Saldivar" and its averment that Saldivar's investigation although unverified, was probably true, do not pass this Court's test.^[36] While we should not condone the acts of disloyalty of an employee, neither should we dismiss him on the basis of suspicion derived from speculative inferences.

To rely on the Maramara report as a basis for Salazar's dismissal would be most iniquitous because the bulk of the findings centered principally on her friend's alleged thievery and anomalous transactions as technical operations' support manager. Said report merely insinuated that in view of Salazar's special relationship with

Saldivar, Salazar might have had direct knowledge of Saldivar's questionable activities. Direct evidence implicating private respondent is wanting from the records.

It is also worth emphasizing that the Maramara report came out after Saldivar had already resigned from GMCR on May 31, 1984. Since Saldivar did not have the opportunity to refute management's findings, the report remained obviously one-sided. Since the main evidence obtained by petitioner dealt principally on the alleged culpability of Saldivar, without his having had a chance to voice his side in view of his prior resignation, stringent examination should have been carried out to ascertain whether or not there existed independent legal grounds to hold Salazar answerable as well and, thereby, justify her dismissal. Finding none, from the records, we find her to have been unlawfully dismissed.

WHEREFORE, the assailed Resolution of public respondent National Labor Relations Commission dated December 29, 1987 is hereby **AFFIRMED**. Petitioner GMCR is ordered to **REINSTATE** private respondent Imelda Salazar and to pay her backwages equivalent to her salary for a period of two (2) years only. This decision is immediately executory.

SO ORDERED.

Paras, Bidin, Griño-Aquino, Medialdea, Regalado, Davide, Jr. and Nocon, JJ., concur.

Gutierrez, Jr., J., no part as son handled case while still with counsel's law firm.

Feliciano, J., no part, in view of stock interest in petitioner.

Padilla, JJ., no part, in view of equity interest in petitioner corporation.

Cruz, J., concur in the result.

Narvasa, C.J., I agree with Justice Herrera that there is just cause for dismissal.

Herrera, J., I believe there is just cause for dismissal per investigative findings (See Dec., p. 2).

[1] Records, pp. 34-43.

- [2] Records, p. 22.
- [3] Ibid, p. 121.
- [4] Rollo, p. 149.
- [5] Soriano vs. NLRC, G.R. No. 75510, October 27, 1987, 155 SCRA124.
- [6] Pres. Decree No. 442, as amended by Rep. Act No. 6715.
- [7] LABOR CODE (1991), Book VI, Rule 1, Secs. 2 and 3.
- [8] CONST., Art. XIII, Sec. 1, par. (1).
- [9] CONST., Art. XIII.
- [10] CONST., Art. XIII, Sec. 3, pars. (1) and (2).
- [11] CONST. (1973), Art. II, Sec. 9.
- [12] CONCOM Record, Vol. 2, p. 681.
- [13] The following provision on security of tenure is embodied in Article 279, Labor Code, reproduced herein but with the amendments inserted by Republic Act No. 6715 approved on March 2, 1989 in bold type:
“In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights AND OTHER PRIVILEGES and to his FULL backwages, 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.”
- [14] The application of Article 279 is illustrated in the following cases: Santos Salao vs. NLRC, G.R. No. 90786, September 21, 1991; Morales vs. NLRC, G.R. 91501, August 2, 1990, 188 SCRA 295; Carandang vs. Dulay, G.R. 90492, July 30, 1990, 188 SCRA 792; and Santos vs. NLRC, No. 76.721, September 21,1987,154 SCRA 166.
- [15] Webster’s New Twentieth Century Dictionary.
- [16] Balaquezon EWTU vs. Zamora, Nos. L-46766-7, April 1, 1980, 97 SCRA 5.
- [17] San Miguel Corporation vs. Deputy Minister of Labor and Employment, No. 58927, October 27, 1986, 145 SCRA 204.
- [18] Hydro Resources Contractors Corporation vs. Pagalibuan, G.R. 62909, April 18, 1989, 172 SCRA 404.
- [19] Century Textile Mills, Inc. vs. NLRC, No. 77859, May 25, 1988, 161 SCRA 528.
- [20] Gubac vs. NLRC, G.R. No. 81946, July 13, 1990, 187 SCRA 412.
- [21] Sealand Service, Inc. vs. NLRC, G.R. No. 90500, October 5, 1990, 190 SCRA 347.
- [22] Commercial Motors Corporation vs. Commissioners, G.R. No. 74762, December 10, 1990, 192 SCRA 191; De Vera vs. NLRC, G.R. No. 93212, November 22, 1990,191 SCRA 632; Orcino vs. Civil Service Commission, G.R. No. 92869, October 18, 1990, 190 SCRA 815; Maglutac vs. NLRC/Conmart vs. NLRC, G.R. No. 78637, September 21, 1990, 189 SCRA 767; Carandang vs. Dulay, G.R. No. 90942, August 20, 1990, 188 SCRA 792; Esmalin vs. NLRC, G.R. No. 67880, September 15, 1989, 177 SCRA 537; Fernandez vs. NLRC, G.R No. 84302, August 10, 1989, 176 SCRA 269; Quezon Electric Cooperative vs. NLRC, G.R. Nos. 79718-22, April 12, 1989,

- 172 SCRA 88; *Bautista vs. Inciong*, No. 52824, March 16, 1988, 158 SCRA 665; *Citytrust Finance Corp. vs. NLRC*, No. 75740, January 15, 1988, 157 SCRA 87; *Asiaworld Publishing House, Inc. vs. Ople*, No. 56398, July 23, 1987, 152 SCRA 219; and *Divine Word High School vs. NLRC*, No. 72207, August 6, 1986, 143 SCRA 346.
- [23] *Chua Qua vs. Clave*, G.R. No. 49549, August 30, 1990, 189 SCRA 117; *Gold City Integrated Port Services, Inc. vs. NLRC*, G.R. No. 86000, September 21, 1990, 189 SCRA 811; *ALU vs. NLRC*, G.R. Nos. 83886-87, September 20, 1990, 189 SCRA 743; and *Pizza Inn vs. NLRC*, No. 74531, June 28, 1988, 162 SCRA 773.
- [24] *Maglutac vs. NLRC*, G.R. No. 78345, September 21, 1990, 189 SCRA 767; *Conmart vs. NLRC*, G.R. No. 78637, 189 SCRA 767; *De Vera vs. NLRC*, G.R. No. 93212, November 22, 1990, 191 SCRA 632; *Commercial Motors Corp. vs. Commissioners*, G.R. No. 74762, December 10, 1990, 192 SCRA 191; *Sealand Service, Inc. vs. NLRC*, G.R. No. 90500, October 5, 1990, 190 SCRA 347.
- [25] LABOR CODE, Art. 279.
- [26] R. AGPALO, STATUTORY CONSTRUCTION, p.94 (1990).
- [27] *Aparri vs. Court of Appeals*, G.R. No. 30057, January 31, 1984, 231 SCRA 241.
- [28] *Asiaworld Publishing House, Inc. vs. Ople*, No. 56393, July 23, 1987, 152 SCRA 219.
- [29] *Citytrust Finance Corp. vs. NLRC*, No. 75740, January 15, 1988, 157 SCRA 87.
- [30] *Bautista vs. Inciong*, No. 52824, March 16, 1988, 158 SCRA 665.
- [31] *Esmalin vs. NLRC*, G.R. No. 67880, September 15, 1989, 177 SCRA 537
- [32] *Maglutac vs. NLRC*, G.R. No.78345, September 21, 1990, 189 SCRA 767.
- [33] *Anscor Transport and Terminals vs. NLRC*, G.R No. 85894, September 28, 1990, 190 SCRA 147.
- [34] *Sibal vs. Notre Dame of Greater Manila*, G.R. No. 75093, February 23, 1990, 182 SCRA 538.
- [35] *Reyes vs. Zamora*, No. L-46732, May 5, 1979, 90 SCRA 92; *De Vera vs. NLRC and BPI*, G.R No. 93070, August 9, 1991.
- [36] *Rollo*, pp. 29 and 35.