

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**ITOGON-SUYOC MINES, INC.,
*Petitioner,***

-versus-

**G.R. No. L-54280
September 30, 1982**

**NATIONAL LABOR RELATIONS
COMMISSION AND OPEGINIO ABREU,
SR.,**

Respondents.

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D E C I S I O N

DE CASTRO, J.:

SEPARATE OPINIONS:

BARREDO, Chairman, J., concurring.:
ABAD SANTOS, J., dissenting.:

Itoyon-Suyoc Mines, Inc., in this Petition for *Certiorari* with Restraining Order/Injunction, seeks to set aside the Decision^[1] of respondent National Labor Relations Commission dated May 23, 1980, which ordered petitioner, on “grounds of equity”, to pay private respondent “separation pay equivalent to fifteen (15) days pay for

every year of service”, despite its finding that the latter’s breach of trust was sufficiently established and “the maximum penalty of severance of employment status suffices for the offense committed by him,” thereby setting aside the Decision^[2] of the Labor Arbiter dated April 2, 1979, which denied petitioner’s application for clearance to terminate the services of said private respondent and “ordered that Abreu be reinstated immediately to his former position with back wages from the time of his suspension up to his actual reinstatement and without loss of seniority rights.”

Record shows that on December 22, 1978, herein petitioner filed with the Ministry of Labor, Baguio District Labor Office Baguio City, an application for clearance to terminate private respondent from employment on the ground of “highgrading” (stealing high grade stones), and at the same time, placed him under preventive suspension pending approval of said application. Private respondent filed his opposition to said clearance application, so the case was certified to the Labor Arbiter of the National Labor Relations Commission, Regional Branch No. 1, Baguio City, for compulsory arbitration and/or hearing.

On April 2, 1979, the Labor Arbiter assigned on the case rendered judgment finding the charge of highgrading to be without merit for “it is not sufficiently supported by evidence.” Petitioner’s application for clearance was therefore denied and the immediate reinstatement with back wages and without loss of seniority rights of private respondent was ordered.

On Appeal at the instance of herein petitioner, the above decision of the Labor Arbiter was, however, set aside by the respondent National Labor Relations Commission, which found private respondent’s breach of trust to be sufficiently established by the evidence on record, considering that he was apprehended in flagrante delicto during the meal break at 16 Vein which is not his place of work nor was he authorized to be there. Consequently, the respondent Commission decreed the severance of employment status of private respondent. In the said decision, however, petitioner was ordered to grant private respondent separation pay as indicated earlier.

Not satisfied with the judgment of the respondent Commission, petitioner filed the present petition on the ground that said decision is contrary to law and was issued by the respondent Commission with grave abuse of discretion amounting to excess of jurisdiction. It is pointed out that when termination of employment is for a just cause, the employer is not obliged to pay to the terminated employee any separation pay since that would be inconsistent with dismissal for just cause, even on the ground of equity, considering that where the law clearly applies, equity does not apply. Petitioner consequently prays for the approval of its application for clearance to terminate private respondent's employment for just cause.

The Solicitor General, while conforming with petitioner's contention that when termination of employment is for a just cause, the terminated employee is not entitled to separation pay, disagrees with the conclusion reached by the respondent Commission that breach of trust by private respondent was sufficiently established, asserting that the Labor Arbiter was correct in denying petitioner's clearance application for insufficiency of evidence. The dismissal of the petition is therefore recommended, with the observation that it is rather unfortunate for the private respondent not to have contested the decision of respondent Commission, the effect of which recommendation, if granted, is to sustain the grant of separation pay which is allegedly much less than what the Labor Arbiter had granted.

Upon the other hand, private respondent, both in his comment to the petition and in this memorandum, urged that the decision of the Labor Arbiter which he claims is supported by sufficient evidence on record, be affirmed, or, in the alternative, to sustain the grant of separation pay because of the insufficiency of evidence as found out and decided by respondent Commission.

It should be stressed at this juncture, that the findings of facts of respondent Commission may be deemed as accepted by private respondent, considering that said party did not file any motion for reconsideration of the aforementioned decision, much less appeal therefrom. The net result is that private respondent cannot now impugn the correctness of the findings of facts contained in the decision subject of this petition. The rule is well-settled that a party cannot impugn the correctness of a judgment not appealed from by

him; and while he may make counter assignment of errors, he can do so only to sustain the judgment on other grounds but not to seek modification or reversal thereof,^[3] for in such case, he must appeal.^[4]

Considering the circumstances above pointed out, We are constrained to give full accord and deference to the findings of respondent Commission that breach of trust by private respondent was sufficiently established, by reason of which, his dismissal may be justified without any monetary obligation on the part of the employer.

Sec. 7. Termination of employment by employer. — The just causes for terminating the services of an employee shall be those provided in Article 283 of the Code. The separation from work of an employee for a just cause does not entitle him to the termination pay provided in the Code, without prejudice, however, to whatever rights, benefits and privileges he may have under the applicable individual or collective bargaining agreement with the employer or voluntary employer policy or practice. (Italics supplied) Rule I, Book VI, Implementing Rules and Regulations of the new Labor Code.

As repeatedly been held by this Court, an employer cannot legally be compelled to continue with the employment of a person who admittedly was guilty of breach of trust towards his employer and whose continuance in the service of the latter is patently inimical to its interest. The law in protecting the rights of the laborers, authorized neither oppression nor self-destruction of the employer.^[5]

However, taking into account private respondent's "twenty-three (23) years of service which undisputedly is unblemished by any previous derogatory record" as found by the respondent Commission itself, and since he has been under preventive suspension during the pendency of this case, in the absence of a showing that the continued employment of private respondent would result in petitioner's oppression or self-destruction,^[6] We are of the considered view that his dismissal is a drastic punishment. As succinctly stated in the ponencia of the Chief Justice:^[7]

"It would imply at the very least that where a penalty less punitive would suffice, whatever missteps may be committed by

labor ought not to be visited with a consequence so severe. It is not only because of the law's concern for the workingman. There is, in addition, his family to consider. Unemployment brings untold hardships and sorrows on those dependent on the wage-earner. The misery and pain attendant on the loss of jobs then could be avoided if there be acceptance of the view that under all the circumstances of this case, petitioners should not be deprived of their means of livelihood. Nor is this to condone what had been done by them. For all this while, since private respondent considered them separated from the service, they had not been paid. For the strictly juridical standpoint, it cannot be too strongly stressed that where a decision may be made to rest on informed judgment rather than rigid rules, all the equities of the case must be accorded their due weight. Finally, labor law determinations should be not only *secundum rationem* but also *secundum caritatem*.”

The ends of Social and compassionate justice would therefore be served if private respondent is reinstated but without backwages in view of petitioner's obvious good faith.^[8]

WHEREFORE, judgment is hereby rendered denying the application for clearance to terminate the services of respondent Opeginio Abreu, Sr. filed by petitioner Itogon-Suyoc Mines, Inc., which is hereby directed to immediately reinstate said respondent to his former position, if possible, otherwise, to a substantially equivalent position without loss of seniority rights but without backwages. The temporary restraining order heretofore issued is hereby made permanent. No costs.

SO ORDERED.

Concepcion, Jr., Guerrero, and Abad Santos, JJ., concur.

SEPARATE OPINIONS

BARREDO, Chairman, J., concurring:

I concur. I agree with the Solicitor General that there is insufficient evidence to support the charge of highgrading against private respondent, which I feel is involved in this case even if seemingly there is no appeal posted.

ABAD SANTOS, J., dissenting:

The issue in this case is simple: should the petitioner give separation pay to the private respondent as ordered by the NLRC despite its finding that the private respondent committed a breach of trust? The matter of private respondent's reinstatement is not in question because he did not appeal the decision of the NLRC.

Since to pay or not to pay the only question, I cannot go along with the decision which unjustifiably orders the reinstatement of the private respondent.

The failure of the private respondent to appeal the NLRC decision has another implication. It can be deemed as an admission that he was indeed guilty of breach of trust and considered himself fortunate, notwithstanding such breach, to have been awarded separation pay.

“Highgrading” has caused great economic losses to the mining industry. It consists in stealing ores with a high gold content; the gold flecks are visible even to the naked eye. “Highgrading” has attained such serious proportions that on November 3, 1974, P.D. No. 581 had to be issued. The decree is entitled, PRESCRIBING A HEAVIER MINIMUM PENALTY FOR HIGHGRADING OR THEFT OF GOLD FROM A MINING CLAIM OR MINING CAMP and has the following preambular paragraphs:

“WHEREAS, ‘highgrading’ or the theft of gold has become rampant in the mining areas where gold is produced because of the high price that tins precious metal now commands in the free market;

WHEREAS, gold mining is one of the industries that the Government encourages because of the role that gold plays in our economy not only as an important part of our international reserves, but also as one of our principal sources of foreign exchange;

WHEREAS, the existing laws have proved inadequate in curbing highgrading because of the difficulty in apprehending highgraders and also because of the light penalties usually imposed on the accused due to the relatively low value which the Courts give to stolen gold-bearing ores or rocks;

WHEREAS, ‘highgrading’ causes damage not only to the operator of the mining claims, but also to the Government which loses the foreign exchange and the taxes the stolen gold could have generated and, worse, it promotes black-marketing and smuggling abroad of this precious metal; and

WHEREAS, one of the principal aims of our New Society is to stamp out all forms of lawlessness to promote the social and economic well-being of our people.”

Considering that the termination of the private respondent’s employment was for a just cause, he is not entitled to separation pay. I vote to grant the petition.

Aquino, J., concurs.

[1] Annex “A” Petition, pp. 10-14, Rollo.

[2] Annex “1” Comment of Respondent Abreu, pp. 29-31, Id.

[3] Lianga Lumber Co. vs. Lianga Timber Co., Inc., 76 SCRA 197; David vs. de la Cruz, 103 Phil. 380; Aparri vs. Court of Appeals, 13 SCRA 611.

[4] Bunge Corporation and Universal Commercial Agencies vs. Elena Camenforte & Co., 91 Phil. 861; Gorospe vs. Peñaflores, 101 Phil. 886.

- [5] San Miguel Brewery, Inc. vs. National Labor Union, 97 Phil. 378; El Hogar Filipino Mutual Bldg & Loan Assn., vs. Building Employees Inc., 107 Phil. 473.
- [6] Philippine Air Lines, Inc. vs. Philippine Air Lines Employees Association (PALEA), 57 SCRA 489.
- [7] Meracap vs. International Ceramics Mfg. Co., Inc., 92 SCRA 412, 417.
- [8] San Miguel Corporation vs. Secretary of Labor, 64 SCRA 56.

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