SUPREME COURT
THIRD DIVISION

NASIPIT LUMBER COMPANY, INC.,
***Petitioner*,**

-versus-

G.R. No. L-54424
August 31, 1989

NATIONAL LABOR RELATIONS COMMISSION, EXECUTIVE LABOR ARBITER ILDEFONSO G. AGBUYA and JUANITO COLLADO,
***Respondents*.**
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D E C I S I O N

FERNAN, *C.J.*:

Petitioner Nasipit Lumber Company, Inc. (NALCO for brevity) is a domestic corporation organized and existing under the laws of the Philippines. It is engaged in the business of logging, lumber manufacturing and wood processing with field offices at Nasipit, Agusan del Norte.

Private respondent Juanito Collado was employed by petitioner as a security guard on September 9, 1970. He was assigned as 1st Sergeant of the NALCO Security Force at Nasipit. In the course of Collado's employment or on August 20, 1976, four (4) crates of lawanit boards

containing 1,000 panels were stolen from petitioner's premises, particularly the crating section of the Philippine Wallboard Corporation, a NALCO affiliate.

Collado was implicated in the theft and was thereafter placed under preventive suspension. On September 8, 1976, NALCO filed a petition (application) for clearance to dismiss Collado with the Regional Office No. X of the Department of Labor in Cagayan de Oro City.[1] On September 15, 1976, Collado filed an opposition to said application for clearance to dismiss. The case was set for hearing the following day, September 16, but Collado, despite notice, failed to appear. Hence, NALCO was allowed to present evidence ex-parte.

On October 12, 1976, the application for clearance to dismiss was approved in an order issued by Regional Office No. X Officer-in-Charge Roy V. Señeres.[2] The order was based on the investigation report of the head of the Agusan Provincial Labor Office. Collado filed a motion for the reconsideration of said order on the ground that he was not given an opportunity to rebut the false findings or adduce evidence in his favor. He further denied participation in the theft.[3]

On December 7, 1976, the said Officer-in-Charge, through a subordinate, certified the case to the Executive Labor Arbiter for compulsory arbitration.[4] Notice and summons were issued. NALCO and Collado were then required to submit their respective position papers under pain of a default judgment.[5] After a perusal of the records, Executive Labor Arbiter Ildefonso G. Agbuya returned the case to the Regional Director of Regional Office No. X in Cagayan de Oro City for whatever appropriate action he may deem fit. A portion of the order dated February 25, 1977 of said Executive Labor Arbiter reads:

> "From all indications, we find that the Motion for Reconsideration should be treated as an appeal to (sic) the Order of Roy V. Señeres, dated 12 October 1976, and as such it should be elevated to the Secretary of Labor. Besides, we also fear that if we take cognizance of this case, perhaps, we might reverse the order of the Regional Director which, to our thinking, would only create a disturbance to the harmonious relation existing between our two offices."[6]

Consequently, the case was elevated to the Secretary of Labor. On June 7, 1978, Acting Secretary of Labor Amado G. Inciong issued an order affirming the order of Officer-in-Charge Roy V. Señeres thereby granting petitioner's application for clearance to dismiss Collado.[7]

Instead of resorting to this Court on a petition for certiorari,[8] on October 9, 1978, Collado filed a complaint before the Butuan District Labor Office, Butuan City, for unjust dismissal and reinstatement with backwages and benefits.[9] Without going to specifics, Collado averred therein that his termination from employment "was unfounded, unjust and illegal, based as it was on uncorroborated and malicious suspicion, insinuation and hearsay, and characterized by harassment."

NALCO filed a motion to dismiss the complaint. It alleged that in view of Acting Secretary Inciong's aforesaid order, Collado did not have any sufficient cause of action and therefore his complaint was a nuisance.[10] In its position paper, NALCO added that because Acting Secretary Inciong's order had become final and executory, the issue of illegal dismissal had also become res judicata.[11]

The case having been certified for compulsory arbitration, on January 29, 1979, Executive Labor Arbiter Ildefonso G. Agbuya rendered a decision ordering NALCO to reinstate Collado to his former position without backwages and without loss of seniority rights "provided he has the necessary papers required of the service as security guard.[12]

In his decision, the said labor arbiter stated that while NALCO complied with the requirements of law when it obtained a clearance to terminate, he could not discount the possibility that NALCO "knew or at least suspected that there was something wrong with the manner in which the investigation was conducted" by the head of the Butuan District Labor Office whose report was the basis of the approval of the clearance application.[13] He conceded that NALCO acted in good faith in terminating Collado's employment and that it was NALCO's prerogative to terminate such employment to protect its business interests. However, he was constrained to arrive at said conclusion ordering the reinstatement of Collado because of the order of the Nasipit municipal judge in Criminal Case No. 2236 finding that

there was nothing in the testimony of the prosecution witness to establish the probable guilt of Collado who should therefore be dropped from the complaint for qualified theft. He also took into consideration the certification of the Agusan del Norte provincial fiscal showing that Collado had also been dropped from the complaint in Criminal Case No. 1127.

Both parties appealed to the National Labor Relations Commission (NLRC). NALCO asked for the reversal and revocation of the decision of the Executive Labor Arbiter while Collado prayed for a modification of the appealed decision to include backwages and benefits in addition to reinstatement.

On May 30, 1980, the NLRC First Division[14] rendered a decision modifying the Executive Labor Arbiter's decision by ordering Collado's reinstatement to his former position with two (2) years backwages without qualification and loss of seniority rights.[15] It agreed with the findings and conclusions of the Executive Labor Arbiter with respect to the dropping of Collado from the criminal cases but it ruled that the rights of Collado to backwages were not precluded by the findings that his termination was effected in good faith. On the issue of res judicata, the NLRC said:

> "We cannot subscribe to the arguments of the respondent-appellant that the order of the OIC of Region X which was subsequently approved by then Acting Secretary Amado G. Inciong has become the law of the case. Res judicata cannot be validly invoked in this case because the granting of the application for clearance which although admittedly was secured with all the formalities required by law, did not resolve the case on its merits. Records show that on September 16, 1976 the application to terminate was scheduled for investigation before the Provincial Labor Office. Petitioner Collado who was then the respondent in this case failed to appear although he was properly notified of the scheduled investigation. On September 22, 1976, the Head of the Agusan Provincial Office submitted its investigation report recommending the approval of the application to terminate Juanito Collado without affording him another chance to be heard and defend his side. It is very clear that the investigation conducted by the Provincial

> Labor Office was hastily done and vitiated with infirmities. What it should have done is to give the respondent (Collado) another chance to defend his case considering the gravity of the offense imputed against him which if proved would cause him his only means of livelihood."[16]

NALCO filed the instant petition for certiorari and prohibition with prayer for the issuance of a writ of preliminary injunction and/or a restraining order, seeking to annul the NLRC decision and to prohibit its execution. It imputed to the NLRC lack or excess of jurisdiction and grave and patent abuse of discretion amounting to lack of jurisdiction in overturning the final decision of the Acting Secretary of Labor thereby denigrating the time-honored doctrine of bar by former judgment or res judicata. It assailed Collado's reinstatement as improper inasmuch as the employer-employee relations of the parties had been legally severed by the approval of the clearance to dismiss.

This Court dismissed the petition for lack of merit.[17] Upon receipt of the dismissal resolution, NALCO filed an urgent motion for reconsideration based on the following grounds: (a) it has a valid and meritorious cause of action due to the NLRC's violation of the principle of res judicata; (b) the occurrence of a supervening event consisting of the remand of the records of the approved clearance to dismiss for execution and/or appropriate action, 49 days after the promulgation of the herein questioned NLRC decision; (c) the NLRC not only disregarded the final and executory decision of the Acting Secretary of Labor but also the pronouncements of this Court on the curative effects of appeals in labor cases wherein the issue of denial of procedural due process had been raised; and (d) should the NLRC decision become final, a confusing situation of two diametrically opposed decisions on the same issue of dismissal, would arise.

Understandably, Collado opposed the motion for reconsideration. On the other hand, the Solicitor General, appearing for public respondents, filed a manifestation and motion recommending that the urgent motion for reconsideration be granted. He stated therein that the NLRC gravely abused its discretion because: (a) all the elements of res judicata are present in this case: (b) the merits of Collado's dismissal had been litigated in the first case and Collado

was therefore estopped from attacking the final decision of the Acting Secretary of Labor either in the original action or in a new and subsequent action; (c) not only the "formal aspect" in the application for clearance to terminate was involved in the first case as the merits thereof were fully taken into consideration; and (d) to allow a distinction between the two cases would result in splitting a cause of action which would ultimately breed multiplicity of suits.

On the strength of the Solicitor General's manifestation and motion, the Court reconsidered the dismissal resolution and gave due course to the instant petition for certiorari and prohibition.[18]

The two principal issues presented to this Court for adjudication are the applicability of the principle of res judicata and the legality of Collado's reinstatement with backwages and without loss of seniority rights.

On the first issue, we hold that this is one of the cases wherein the pronouncement of this Court thru Justice Vicente Abad Santos in Razon vs. Inciong[19] applies. The Court stated therein that the principle of res judicata may not be invoked in labor relations proceedings considering that Section 5, Rule XIII, Book V of the Rules and Regulations Implementing the Labor Code provides that such proceedings are "non-litigious and summary in nature without regard to legal technicalities obtaining in courts of law." Said pronouncement is in consonance with the jurisprudential dictum that the doctrine of res judicata applies only to judicial or quasi-judicial proceedings and not to the exercise of administrative powers.[20]

The requirement of a clearance to terminate employment was a creation of the Department of Labor to carry out the Labor Code provisions on security of tenure and termination of employment. The proceeding subsequent to the filing of an application for clearance to terminate employment was outlined in Book V, Rule XIV of the Rules and Regulations Implementing the Labor Code. The fact that said rule allowed a procedure for the approval of the clearance with or without the opposition of the employee concerned (Secs. 7 & 8), demonstrates the non-litigious and summary nature of the proceeding. The clearance requirement was therefore necessary only as an expeditious shield against arbitrary dismissals without the knowledge and

supervision of the Department of Labor. Hence, a duly approved clearance implied that the dismissal was legal or for cause (Sec. 2).

But even while said clearance was a requirement, employees who faced dismissal still contested said applications not only through oppositions thereto but by filing separate complaints for illegal dismissal. Usually, the investigation on the application and the hearing on the complaint for illegal dismissal were conducted simultaneously. What makes the present case unusual is that the employee filed the complaint for illegal dismissal only after the Acting Secretary of Labor had affirmed the approval of the application to terminate his employment. Nonetheless, we are unprepared to rule that such action of the Acting Secretary of Labor barred Collado from filing the complaint for illegal dismissal. If ever, the most that can be attributed against Collado is laches for his failure to question seasonably the Acting Secretary of Labor's affirmance of the approval of the clearance to terminate. However, to count such laches against Collado would be prejudicial to his rights as a laborer.

Be that as it may, the possibility that there would be two conflicting decisions on the issue of Collado's dismissal may now be considered academic. The requirement of a written clearance from the Department prior to termination was abolished by the enactment of Batas Pambansa Blg. 130 in 1981. Dismissal proceedings are now confined within the establishments. The NLRC or the labor arbiter steps in only if the said decision is contested by the employee.[21]

On the legality of Collado's dismissal, we hold that the NLRC abused its discretion in directing his reinstatement with two (2) years backwages. The relation between petitioner and Collado is now strained by the latter's violation of the trust and confidence reposed on him as a member of the security force, a position impressed with a high degree of trust.[22] Proof beyond reasonable doubt of an employee's misconduct is not required when loss of confidence is the ground for dismissal. It is sufficient if the employer has "some basis" to lose confidence or that the employer has reasonable ground to believe or to entertain the moral conviction that the employee concerned is responsible for the misconduct and that the nature of his participation therein rendered him absolutely unworthy of the trust and confidence demanded by his position.[23]

In this case, petitioner supported its application for clearance to terminate Collado's employment with sworn statements implicating him in the theft.[24] Such sworn statements are sufficient to warrant the dismissal. On the other hand, the dropping of the qualified theft charges against Collado is not binding upon a labor tribunal.[25] The sensitivity of Collado's job as a security guard *vis-a-vis* the cause of his dismissal cost him his right to be rehired to the same position. Reinstatement is not proper where termination of employment was due to breach of trust and confidence.[26]

We are aware of Collado's almost six years of service to the petitioner as well as the hardships resulting from the loss of his job. Compassion dictates us to grant him separation pay as financial assistance but we are bound by the ruling of the Court en banc in Philippine Long Distance Telephone Company vs. NLRC[27] that henceforth separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character.

WHEREFORE, the decision of the NLRC is hereby reversed and set aside. Juanito Collado's dismissal from employment is hereby declared valid. No costs.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin and Cortes, *JJ.*, concur.

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[1] STF-ROX Case No. A-078-76; Rollo, pp. 35-38.
[2] Rollo, p. 58.
[3] Rollo, pp. 59-62.
[4] Rollo, p. 64.
[5] Rollo, p. 63.
[6] Rollo, p. 67.
[7] Rollo, p. 34.
[8] Appeal to the Office of the President was eliminated by the promulgation on May 1, 1973 of Presidential Decree No. 1367. On May 29, 1978, P.D. No. 1391 further delimited appeals to the NLRC.
[9] ROX Arbitration Case No. 561-78; Rollo, pp. 69-70.
[10] Rollo, p. 71.

[11] Rollo, p. 75.
[12] Rollo, pp. 77-83.
[13] Rollo, p. 82.
[14] Diego P. Atienza, presiding commissioner and Geronimo Q. Quadra and Cleto T. Villatuya, commissioners.
[15] Rollo, p. 32.
[16] Rollo, pp. 30-31.
[17] Rollo, p. 125.
[18] Rollo, p. 185.
[19] G.R. No. 51809, December 19, 1980, 101 SCRA 738, 742.
[20] 50 C.J.S. 27 citing Empire Star Mines Co. vs. California Employment Commission, 168 P. 2d 686.
[21] Rule XIV, Book V, Omnibus Rules Implementing the Labor Code.
[22] Rollo, p. 24.
[23] Citytrust Finance Corporation vs. NLRC, G.R. No. 75740, January 15, 1988, 157 SCRA 87, 94.
[24] Rollo, pp. 39-54.
[25] Zamboanga City Water District vs. Bartolome, G.R. No. 66766, December 20, 1985, 140 SCRA 432 citing Sea-Land Service, Inc. vs. NLRC, G.R No. 68212, May 24, 1985, 136 SCRA 544, 547-548.
[26] University of the East vs. NLRC, G.R. No. 71065, November 22, 1985, 140 SCRA 296.
[27] G.R. No. 80609, August 23, 1988.