SUPREME COURT
THIRD DIVISION

TANDUAY DISTILLERY LABOR UNION AND DOROTEO FLORES, BENJAMIN DE MESA, POTENCIANO GRAJO, MODESTO AGALOOS, ANTONIO LAGOS AND MANUEL CHICO,
***Petitioners*,**

-versus-

G.R. No. 73352
December 6, 1994

NATIONAL LABOR RELATIONS COMMISSION AND TANDUAY DISTILLERY, INC.,
***Respondents*.**
x----------x

D E C I S I O N

VITUG, *J.*:

Individual petitioners were employees of private respondent Tanduay Distillery, Incorporated. On 21 April 1981, its General Manager informed said petitioners, in a memorandum, that they were to be dismissed, upon approval of its application for clearance by the Ministry of Labor and Employment ("MOLE"), for infraction of company rules and regulations, to wit:

"1. Eating while working and having food on the line, disregarding previous warnings given by their superior (Antonio Lagos, Modesto Agaloos, Manuel Chico);

"2. Drinking of alcoholic beverages while working and within company premises (Antonio Lagos, Modesto Agaloos, Manuel Chico);

"3. (Leaving) not physically present at assigned job (Antonio Lagos, Modesto Agaloos);

"4. Destruction of company property (Modesto Agaloos);

"5. Assault persons of superior authority and actually inflicting injuries on persons of authority.[1]

The memorandum further imposed and forthwith implemented a preventive suspension on each of them.

Petitioners filed with the MOLE their Opposition to the application for clearance.

On 29 May 1984, after the case was heard and the respective position papers and memoranda of the parties were filed, Labor Arbiter Ernilo V. Peñalosa rendered his decision dismissing the application for clearance and directing private respondent "to immediately reinstate the individual complainants to their former positions without loss of seniority rights and to pay backwages to any and/or all of them when absolved of criminal liability from the time of preventive suspension on April 21, 1981 until actually reinstated."[2]

The Labor Arbiter based his decision on these findings; viz.:

> "The individual complainants all belong to the Production Department and were assigned to the night shift that last up to 9:30 P.M. Complainants Modesto Agaloos, Manuel Chico and Antonio Lagos were assigned to Line 3; complainants Benjamin de Mesa and Potenciano Grajo were assigned to Line 2; while complainant Doroteo Flores was assigned to Line 1.

“While complainants Agaloos, Chico and Lagos were doing their work in Line 3, Assistant Supervisor Israel Bello, who temporarily took the place of the regular Supervisor who was on a 15-day vacation leave, came at about 7:20 P.M. and confiscated the food (peanuts and chippies) the three were eating and throw it into the waste-basket. When the three asked Bello why he threw their food, the latter answered that drinking liquor is prohibited during working hours and that he had already warned them earlier. The three retorted back that they were not drinking but only eating. Not satisfied with the answer of Bello, the three decided to talk to him after their shift and then resumed working.

“After the end of the night shift, the three together with the other three complainants who witnessed and/or learned of what happened at Line 3 went out of the plant and while outside of the gate they waited for Israel Bello. When Bello came out, followed by foremen Ernesto Balan, Antonio Aday and Emmanuel Martin, complainant Doroteo Flores approached him (Bello) and asked him why he confiscated and threw away the food Agaloos, Chico and Lagos were eating. When a heated argument ensued between Bello and Flores, complainant de Mesa intervened and embraced Bello in order to pacify the two. Believing that Bello was to be hit by Flores, Lagos and Grajo, Balan and Aday came to intervene. In the process Aday pushed Lagos and challenged the latter to a fight but the two were pacified. On the other hand, Balan who is claimed to know karate pushed de Mesa, Grajo and Flores. When Grajo and Flores fell down, Balan kicked Grajo and afterwards, penned down Flores and while trying to bump the latter’s head on the cement he himself got his head bumped on the cement. Not long after the melee or rumble was pacified, another confrontation took place between Lagos and Balan when the former asked the latter why he was looking bad at him and the latter challenged the former to a fight. Allegedly, before the two could do any harm to each other, Balan was said to be hit from behind with a wood (2” x 2” by 1m long) allegedly by Grajo who he had earlier kicked and hit with the buckle of his belt. But this was denied by Grajo.

"The following day an investigation was conducted by management in the presence of some union officers and except for Balan who was hospitalized, all those involved in the incident gave their statements. On the basis alone of the statements given, a decision was handed down by management on April 21, 1981 placing the individual complainants under preventive suspension pending approval of the application for clearance to terminate their services which it has filed on that same day, while the supervisors involved were given vacation leave because to management's view they were not guilty of any violation. In protest to the decision handed down, the complainants wrote a letter to the management that same day of April 21, 1981 which as partly states:

> "'Because of the gravity of the penalty you have unceremoniously accorded to us which we reiterate is wanting in merits and factual basis, we will ask our co-members to rally behind us to help stamp out from the roll of Tanduay Supervisors the names of Israel Bello, Ernesto Balan and Antonio Aday. For as long as they remain they will never desist in the propagation of their sadistic attitude towards the lowly workers.'
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> "'But before the complainants could send the letter, the workers at the Bottling and Packaging Sections of the Production Department, upon learning of the decision handed down by the management on that day of April 21, 1981, refused to start working by way of showing their protest against the decision. This refusal to start working only lasted up to the worker's breaktime at about 8:15 A.M or 8:30 A.M.'"

"The application for clearance to terminate the services of the individual complainants and the latter's opposition thereto had gone thru the grievance machinery. While in the course of the grievance meetings between the union and management the possibility of a compromise was undertaken, the same however failed to materialize and the decision to dismiss the individual complainants was pushed through."[3]

From the decision of the Labor Arbiter, both parties appealed to the National Labor Relations Commission ("NLRC"). The partial appeal of petitioners questioned the propriety of the decision predicating their reinstatement on, or being held subject to, their subsequent acquittal from the criminal cases of slight physical injuries in court. On the other hand, private respondent prayed for a complete reversal of the arbiter's decision and for the approval of its application for clearance.

Acting on the Appeal, the NLRC reversed the Decision of the Labor Arbiter and dismissed herein petitioner's case for lack of merit, holding thusly:

> "The record shows that respondent-appellant resorted to apply preventive suspension of complainants' employment 'after its investigation was terminated on April 21, 1981, or six (6) days after the incident' (p. 10, Appeal of Respondent). The suspension of complainants' employment is the only available remedy to defuse the tension generated by the incident of April 14, 1981, which if not cooled down would likely erupt to a more serious commotion between the protagonists. The presence of complainants in the plant would become a threat to limb (if not life) and property. In fact, another incident happened after April 21, 1981 when Supervisor Israel Bello who was hurt in the melee was booed and shouted at the cashier's office while collecting his salary and a 'wild cat' strike was staged after a few hours. What respondent did under the given situation was to stop complainants from agitating another trouble. This, to our mind, is recognized under Sec. 3, Rule XIV, Book V, Rules Implementing the Labor Code, which is quoted hereunder as follows:
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> > "'Sec. 4 Preventive Suspension.
> >
> > 'The employer may place the worker concerned under preventive suspension if his continued employment poses a serious and imminent threat to the life or property of the employer or of his co-workers.'

> "In the light of the explanations adverted to above and, most significantly, the outcome of the criminal cases for physical injuries instituted by respondent against the complainants convicting them, we have opted to reverse the appealed decision. The dispositive portion of the Decision dated 28 November, 1984 promulgated by the Metropolitan Trial Court of Manila, Branch XVII, is quoted hereunder as follows:
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> "'Premises considered, judgment is hereby rendered:
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> '(1) finding Potenciano Grajo, guilty beyond reasonable doubt of the crime of Slight Physical Injuries in Criminal Case No. 047157 for which he is hereby sentenced to suffer imprisonment at the City Jail of Manila for a period of fifteen (15) days of arresto menor; and to pay Ernesto Balan the sum of P1,687.00 as damages;
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> '(2) finding all the accused, Potenciano Grajo, Antonio Lagos, Modesto Agaloos, Doroteo Flores, Manuel Chico, and Benjamin de Mesa, guilty beyond reasonable doubt of crime of Slight Physical Injuries in Criminal Case No. 047158 for which each of them is hereby sentenced to suffer imprisonment for fifteen (15) days of arresto menor; and to pay Israel Bello, jointly and severally, the sum of P3,301.00 as damages.'"[4]

Petitioners filed a Motion for a Reconsideration of the Decision which, in a minute resolution, the NLRC denied.

Hence, the instant petition.

Petitioners contend that respondent NLRC has committed grave abuse of discretion in completely disregarding the fact that the Regional Trial Court in Manila, on appeal, has acquitted petitioners of the charges filed against them and in failing to consider unrebutted evidence that —

"1. Respondent had tolerated its workers to eat while in the production lines because the night shift is from 2:00 p.m. to 9:30 p.m. and there is no more breaktime after their supper.

"2. When supervisor Israel Bello confiscated the food items from the three petitioners, there were other workers in the same production line also eating or having food items infront of the conveyor but Israel Bello singled them out for having violated company regulations. The other workers who committed the same violation on April 14, 1981 have never been charged or penalized by the Respondent company.

"3. Prior to April 14, 1981 the Respondent company had never enforced the prohibition as strictly as Israel Bello did. Noteworthy is the fact that the confiscation of the food items by Israel Bello was the first incident of that nature during the long years of employment of the Petitioners by the Respondent company.

"4. Israel Bello is a regular Day Shift Supervisor and acted only temporarily in lieu of the regular Night Shift Supervisor on April 14, 1981. Bello's sudden strictness in applying the subject company rule caught the Petitioners by surprise as their regular Night Shift Supervisor had always been lenient to all the workers under him with respect to the subject company rule."[5]

We find merit in the petition. It does appear that petitioners' previous conviction for slight physical injuries by the Metropolitan Trial Court has played rather significantly in the NLRC's decision. Petitioner's subsequent acquittal by the Regional Trial Court, upon the other hand, has apparently been ignored when, by a simple minute resolution of the NLRC, it denied the motion for reconsideration.

Article 283 (now Art. 282) of the Labor Code, as amended, in part, provides:

> "Art. 282. Termination by employer. — An employer may terminate an employment for any of the following causes:
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> > "(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work."

While an employer-firm has a wide latitude of discretion in the promulgation of policies, rules and regulations on the work-related activities of the employees, its directives, however, must always be fair and reasonable, and corresponding penalties, when prescribed, must be commensurate to the offense involved and to the degree of the infraction. In the actual imposition by the employer of penalties on erring employees, this Court has likewise repeatedly ruled that due consideration must be given to their length of service and the number of violations they have committed during their employ (Sampang vs. Inciong, 137 SCRA 56; Philippine Air Lines vs. PAL Employees Association, 57 SCRA 489).

The power to dismiss is a normal prerogative of the employer; so also, however, must the rights of the employee under our laws be placed in equal regard. No less than the Constitution itself has guaranteed the State's protection to labor and its assurance to workers of security of tenure in their employment (Art. XIII, Sec. 3, Constitution).

In this case at bench, the dismissal meted out on petitioners for eating while at work would, under the attendant circumstances, indeed seem to us to be too harsh a penalty. Petitioners were being held liable for the first time on a matter that apparently was even a tolerated "practice" of workers.

We share the view of the Solicitor General who, in concluding that petitioners' dismissal is not called for, has observed thusly:

> "First, petitioners had served respondent company without any record of violation or infraction of company rules and regulations prior to the incident that gave rise to the present case, for the following periods:
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> Doroteo Flores — 16 years

Benjamin de Mesa	—	27 years
Potenciano Grajo	—	16 years
Modesto Agaloos	—	17 years
Antonio Lagos	—	15 years
Manuel Chico	—	26 years

"Second, petitioners belonged to the Production Department of Tanduay, Inc. and were all assigned to the night (second) shift from 2:00 p.m. to 10:00 p.m.

"Third, on December 9, 1980, a memorandum was issued by the Head of the Production Department addressed to the Shift Supervisors and their assistants inviting attention to the existing practice of some workers to take their lunch/merienda during break periods inside the Bottling and Packaging area and asking that said practice be stopped.

"Fourth, on April 14, 1981, petitioners were at their assigned work. They had in front of them on top of their conveyor table peanuts and chippies which they ate when they stop their work to give time to the personnel of the wrapping section to wrap the bottles which passed them.

"Fifth, Assistant Supervisor Israel Bello who temporarily took over the place of the petitioners' regular supervisor, took all the peanuts and chippies in front of petitioners and threw them into the waste basket. Only petitioners were singled out by Bello although other workers were also eating. While Bello was with petitioners, a bottle got stocked up in the filter machine and broke down. Petitioners resumed work until about 9:30 or 9:40 p.m. when they prepared to go home.

"Sixth, a melee took place outside of the company premises after petitioners had gone out. The persons involved in the melee were the petitioners, and supervisors Bello, Aday, Martin, Ernesto Balan and Leonardo Tuazon, with the security guards intervening to stop the fight.

"Seventh, criminal cases of physical injuries were filed by supervisors Bello and Balan against petitioners who also filed

> countercharges of perjury and physical injuries. Petitioners were convicted by the Metropolitan Trial Court (Manila), but on appeal their conviction was reversed by the Regional Trial Court (Manila) and all were acquitted.
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> "Eighth, the decision of the Labor Arbiter directing respondent company to reinstate the individual complainants (petitioners) to their former positions without loss of seniority rights and to pay backwages to any and/or all of them from the time of preventive suspension to date of actual reinstatement was premised on their acquittal from criminal liability."[6]

In Manggagawa ng Komunikasyon sa Pilipinas vs. NLRC, 194 SCRA 573, we said:

> "In termination cases, the burden of proving that the employee's dismissal was for a just cause rests upon the employer in view of the security of tenure that employees enjoy under the Constitution and the Labor Code (Art. XIII, Section 3, 1987 Constitution; Section 280, Labor Code; Century Textile Mills, Inc., et. al. vs. NLRC, 161 SCRA 528). Extreme caution should be exercised in terminating the services of a worker for his job may be the only lifeline on which he and his family depend for survival in these difficult times. That lifeline should not be cut off except for a serious, just, and lawful cause, for, to a worker, the loss of his job may well mean the loss of hope for a decent life for him and his loved ones."

Petitioners' having been out of private respondent's employ for several years now, even if we were to count the benefits awarded to them in the dispositive part of this decision, is, in our considered view, more than enough punishment for their questioned misconduct.

WHEREFORE, the Petition is granted. The Decision of the National Labor Relations Commission is hereby **REVERSED** and **SET ASIDE** and another one is entered **REINSTATING** the Decision of the Labor Arbiter with **MODIFICATION** by directing respondent company to reinstate petitioners to their former respective positions, without loss of seniority rights, and to pay them back salaries equivalent to three (3) years without any qualification (Mercury Drug

Co., Inc., et al. vs. Court of Industrial Relations, 56 SCRA 694).[7] In the event, however, that the previous positions of petitioners may no longer be open or available, considering that more than ten (10) years have since elapsed from the date of their dismissal, private respondent is directed to pay, in lieu of reinstatement and in addition to the three-year back salaries, separation pay equivalent to at least one month for every year of service.[8] No special pronouncement on costs.

SO ORDERED.

Bidin, Romero and Melo, *JJ.*, concur.
Feliciano, *J.*, is on leave.

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[1] Memorandum dated 21 April 1981.
[2] Rollo, pp. 57-58.
[3] Rollo, pp. 52-55.
[4] Rollo, pp. 85-86.
[5] Rollo, pp. 19-20.
[6] Rollo, pp. 199-202.
[7] The applicable rule prior to the effectivity of Republic Act No. 6715 on 21 March 1989 (Maranaw Hotels and Resorts Corp. vs. Court of Appeals, 215 SCRA 501).
[8] See Radio Communications of the Philippines, Inc. vs. NLRC, 210 SCRA 222; Torillo vs. Leogardo, Jr., 197 SCRA 471.
