SUPREME COURT
SECOND DIVISION

MANILA BROADCASTING COMPANY,
***Petitioner*,**

-versus-

G.R. No. 121975
August 20, 1998

NATIONAL LABOR RELATIONS COMMISSION, HON. RICARDO OLAIREZ and SAMUEL L. BANGLOY,
***Respondents*.**
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D E C I S I O N

MENDOZA, *J.*:

This is a Petition for *Certiorari* to set aside the Decision of the National Labor Relations Commission,[1] affirming the Decision of the Labor Arbiter which found private respondent to have been illegally dismissed and which ordered him reinstated with damages.

Private respondent Samuel L. Bangloy was production supervisor and radio commentator of the DZJC-AM radio station in Laoag City. The radio station is owned by petitioner Manila Broadcasting Company.

On February 28, 1992, private respondent applied for leave of absence for 50 days, from March 24 to May 13, 1992,[2] in order to

"run for Board Member" in Ilocos Norte under the Kilusang Bagong Lipunan (KBL). He made his application pursuant to §11(b) of R.A. No. 6646 which provides:

> Sec. 11. (b). Any mass media columnist, commentator, announcer, or personality who is a candidate for any elective public office shall take a leave of absence from his work as such during the campaign period.

After a week, private respondent's application was returned to him, together with a copy of an office memorandum of Eugene Jusi, Assistant Vice-President for Personnel and Administration, to Atty. Edgardo Montilla, Executive Vice-President and General Manager of the FJE Group of Companies, in which it was stated that as a matter of "company policy, "any employee who files a certificate of candidacy for any elective national or local office would be considered resigned from the company.

It would appear that private respondent nonetheless ran in the election but lost. On May 25, 1992, he tried to return to work, but was not allowed to do so by petitioner on the ground that his employment had been terminated.

In a letter dated June 18, 1992 to Medy Lorenzo, station manager of DZJC-AM, private respondent requested reconsideration of his termination.

In a letter dated July 30, 1992, Eugene Jusi informed private respondent that he could not be re-employed for the following reasons: First, there is a company policy considering any employee who runs for public office resigned. Second, only 30 days are allowed for leave. Third, although R.A. No. 6646 requires radio commentators who file certificates of candidacy to go on leave during the campaign period, private respondent was not required to take such leave as production supervisor hence he could not have taken a leave for said position. Fourth, the private respondent's leave was not in accordance with R.A. No. 6646 which allows leave of absence only from the time of the filing of the certificate of candidacy until the day of the election. Private respondent returned to work only on May 25, 1992, two weeks (14 days) after the election on May 11, 1992. Private respondent was

further informed that his radio program has been canceled and replaced with another program and that his position as production supervisor had been abolished.

On March 15, 1993, private respondent filed a complaint for illegal dismissal against petitioner before the Department of Labor and Employment.

In a decision dated November 29, 1993, the Labor Arbiter ruled in favor of private respondent. The dispositive portion of his decision reads:

> WHEREFORE, with all the foregoing considerations, judgment is hereby rendered:
>
> 1. Declaring complainant illegally and unjustly dismissed as he was absolutely denied due process of law;
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> 2. Ordering respondent to reinstate complainant to his former position as Production Supervisor and News Commentator without loss of seniority rights and with full backwages and other fringe benefits without deduction or qualification until he is actually reinstated, computed at P167,986.65 as of November 30, 1993;
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> 3. Ordering respondent to pay complainant P270,000.00 for moral and exemplary damages plus ten percent of the total collective amount for attorneys fees and litigation expenses.
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> The order of reinstatement is immediately executory even pending appeal.
>
> SO ORDERED.

On appeal, the NLRC affirmed the ruling with the modification that the award of damages and attorney's fees was deleted.

Its motion for reconsideration of the NLRC's decision having been denied, petitioner filed this petition, contending:

1. That the respondent abused its discretion when it unduly interfered with the petitioner's management prerogative by nullifying the petitioner's policy that any employee who is running for elective public position shall be considered to have voluntarily terminated his employment relations with the petitioner;

2. That the NLRC gravely abused its discretion when they ruled that the private respondent was made to believe that his leave of absence was approved despite the fact that the said respondent had full knowledge of its non-approval;

3. That the NLRC gravely abused their discretion when they concluded that the petitioner advanced two conflicting theories as grounds for the dismissal of private respondent.[3]

This action has been brought on the theory that under Art. 282(a) of the Labor Code, an employee may be dismissed for willful disobedience of the lawful orders of his employer in connection with his work. Our cases consistently hold that to justify the dismissal of an employee on this ground, it must be shown that his conduct was willful and that the order violated (1) is reasonable and lawful, (2) is known to the employee, and (3) pertains to the duties which the employee has been engaged to discharge.[4]

What is involved in this case is an unwritten company policy considering any employee who files a certificate of candidacy for any elective or local office as resigned from the company. Although §11(b) of R.A. No. 6646 does not require mass media commentators and announcers such as private respondent to resign from their radio or TV stations but only to go on leave for the duration of the campaign period, we think that the company may nevertheless validly require them to resign as a matter of policy. In this case, the policy is justified on the following grounds:

> Working for the government and the company at the same time is clearly disadvantageous and prejudicial to the rights and

> interest not only of the company but the public as well. In the event an employee wins in an election, he cannot fully serve, as he is expected to do, the interest of his employer. The employee has to serve two (2) employers, obviously detrimental to the interest of both the government and the private employer.
>
> In the event the employee loses in the election, the impartiality and cold neutrality of an employee as broadcast personality is suspect, thus readily eroding and adversely affecting the confidence and trust of the listening public to employer's station.[5]

These are valid reasons for petitioner. No law has been cited by private respondent prohibiting a rule such as that in question. Private respondent cites the Local Government Code, §90(b) of which provides that "Sanggunian members may practice their profession, engage in any occupation, or teach in schools except during session hours." This provision, however, is merely permissive and does not preclude the adoption of a contrary rule, such as that in question. The company policy is reasonable and not contrary to law.

The next question is whether the company policy was made known to employees before it was sought to be applied to private respondent. For a rule may be valid but not effective for lack of publication.

Private respondent claims that when he filed his application for leave he was not aware of the company policy considering employees who file certificates of candidacy for elective public office as resigned. Indeed, it is admitted that the policy is not written. Medy Lorenzo, station manager of petitioner's DZJC-AM, testified:[6]

> ARBITER:
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> Q: Is there a written policy given to the employees regarding that policy?
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> MR. LORENZO:
>
> A: None, your Honor.

ARBITER:

Q: You only informed them verbally regarding that policy?

MR. LORENZO:

A: Yes, your Honor.

ARBITER:

Q: Mr. Bangloy, were you present when Mr. Lorenzo told the staff about that policy?

MR. BANGLOY:

A: That was said, I believe, when I was no longer served as production supervisor (sic).

ARBITER:

Q: So you did not hear Mr. Lorenzo when he announced that policy?

MR. BANGLOY:

A: No, your Honor, because my sister-in-law was working with the drama department and she was the one who told me about that after I was no longer serving a production supervisor.

ARBITER:

Q: So you mean when you were already separated?

MR. BANGLOY:

A: Dismissed illegally, your Honor.

It is probable that private respondent did not really know of the policy, otherwise he would not have stated in his application that he

wanted to go on leave because he was going to run for a seat in the provincial board of Ilocos Norte.

It is true that, after filing his application for leave, private respondent was furnished a copy of a memorandum to a company official answering the query concerning employees who wish to run for public office. There are a number of circumstances, however, which raise some doubts whether the company policy was strictly enforced.

To begin with, petitioner apparently has never seen it fit to put the policy in writing. Petitioner has rules governing leaves of employees, but the policy concerning employees who wish to run for public office has never been formally embodied in the rules. As important a rule as one which considers an employee who runs for public office resigned must be written and published so as to lend certainty to its existence and definiteness to its scope. Otherwise, the impression may be fostered that the enforcement of the policy is discretionary on the part of the heads of the various offices and units of the company. Moreover, such an unwritten rule is susceptible of misinterpretation and is not likely to be taken seriously by those to whom it is addressed.

In this case, the fact that a memorandum stating the policy in question had to be issued because of an inquiry by Atty. Edgardo Montilla, petitioner's executive vice-president and general manager, tends to show that the policy was not well-known even to the ranking officials of the company. Indeed, as the NLRC found, private respondent believed in good faith that notwithstanding the company policy in question, he could go on leave without resigning in order to run for a seat in the Sangguniang Panlalawigan because of assurances given by the station manager of DZJC-AM, Medy Lorenzo, that he could do so. In his letter, dated June 18, 1992, to Medy Lorenzo, in which he sought reinstatement in the company, private respondent reminded his immediate superior of such assurances given on two occasions. Private respondent stated in that letter:[7]

> Had I not been able to elicit your [Mr. Medy Lorenzo, Station Manager] personal opinion as well as assurance that my filing of my certificate of candidacy resulted in my leave of absence,

> not resignation, I would have there and then clarified this matter in a written — not just confidentially verbal — form.
>
> Medy Lorenzo did not deny these allegations in private respondent's letter.
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> Indeed, there was no express disapproval of private respondent's leave application. While the return of his application to him without the approval of the personnel manager coupled with the furnishing of a copy of the memorandum to him might imply disapproval of his leave application, the circumstances earlier referred to make it doubtful whether that was the intention of management. At the very least, therefore, private respondent may be presumed to have acted in the good faith when he relied on the assurances given to him by his immediate superior.

On the other hand, private respondent's leave application was approved by Medy Lorenzo, as department head, upon recommendation by private respondent's supervisor. This was sufficient because under the company rules, in the provinces, the station manager is solely responsible for approving leave applications. Approval of the head of the personnel department is not required. Thus the rules provide:[8]

> VII. D3. Within one week before his scheduled vacation, the employee should fill up the standard leave form (Per Form No. 11) in triplicate, secure endorsement of his supervisor and approval of the department head or station manager, and submit it to Personnel. The form shall be distributed as follows:
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> Original — Personnel
>
> Duplicate — Accounting
>
> Triplicate — Employee.
>
> NOTE: In provincial stations, the station manager shall approve the leave directly and shall furnish personnel a copy of the approved leave.

It may be true that private respondent was aware that leaves must be for thirty (30) days only despite the absence of any written rule limiting leaves to such number of days. However, private respondent applied for fifty (50) days, believing that since §11(b) of R.A. No. 6646 requires mass media commentators and announcers who run for public office to go on leave, he could apply for leave for a number of days coterminous with the period for the campaign. For local elective positions, such period is for forty-five (45) days.[9]

Considering the foregoing, we hold that the finding of the NLRC that in filing his certificate of candidacy for public office in 1992 private respondent acted in good faith, thinking that he could do so without resigning from the company, is supported by substantial evidence. This brings us to the question whether private respondent may nevertheless be considered to have been AWOL for failing to return to work after the fifty (50) days for which he applied for leave.

He indeed exceeded the number of days for which he had applied for leave by eleven (11) days, but dismissal would be too severe a penalty for such infraction. In Dolores vs. NLRC,[10] an employee applied for leave for two months. Despite the fact that she was allowed only a month's leave of absence and without waiting for word on her request for reconsideration, she went on leave for two months. For this reason, she was dismissed by her employer. Both the Labor Arbiter and the NLRC found the dismissal unjustified. On review, this Court affirmed the decision, albeit with modification as to damages, considering the employee's 21 years of service and the fact that this was her first offense.

Compared to the one month unauthorized absence of the employee in Dolores vs. NLRC, private respondent's absence was only for eleven (11) days. Moreover, considering that at the time of his dismissal, he had been in the company's employ for six (6) years and this infraction was his first, dismissal would be too severe a penalty to impose on him. Suspension for one month would be to our mind sufficient penalty for his unauthorized absences from May 14 to May 24, 1992, as private respondent reported for work on May 25, 1992. The period of suspension should be deducted from the period taken into account in the computation of backwages awarded to him. Consequently,

private respondent shall be considered suspended from May 25 to June 23, 1992, so that award of backwages shall be for the period beginning June 24, 1992 until he is actually reinstated.

WHEREFORE, the Decision of the NLRC is **AFFIRMED** with the **MODIFICATION** that the award of backwages shall be for the period beginning June 24, 1992 until private respondent is actually reinstated.

SO ORDERED.

Melo, Puno and Martinez, *JJ.*, concur.
Regalado, *J.*, On official leave.

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[1] Per Commissioner Ireneo B. Bernardo and concurred in by Presiding Commissioner Lourdes Javier and Commissioner Joaquin Tanodra.
[2] Actually for 51 days.
[3] Rollo, p. 16.
[4] BLTC Co. vs. Court of Appeals, 71 SCRA 471 (1976); Mañebo vs. NLRC, 229 SCRA 240 (1994); Nuez vs. NLRC, 239 SCRA 518 (1994); AHS/Philippines, Inc. vs. Court of Appeals, 257 SCRA 319 (1996).
[5] Petition, p. 10, Rollo, p. 18.
[6] As quoted in the decision of the Labor Arbiter, Rollo, pp. 148-149.
[7] Rollo, pp. 59-60.
[8] Ibid.
[9] OMNIBUS ELECTION CODE, §3, as amended by R.A. No. 7166, §5.
[10] 205 SCRA 348 (1992).
