SUPREME COURT
FIRST DIVISION

JOVENCIO MINA, RICARDO WANGIT, ANTHONY FARNICAN, PETER ATUBAN AND ARTHUR ALTATIS,
***Petitioners*,**

-versus-

G.R. Nos. 97251-52
July 14, 1995

NATIONAL LABOR RELATIONS COMMISSION (NLRC) and ITOGON-SUYOC MINES, INC.,
***Respondents*.**
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D E C I S I O N

QUIASON, *J.*:

This is a petition for certiorari to set aside the decision of the Third Division of the National Labor Relations Commission (NLRC) in NLRC Case No. RAB-I-0044-81 and NLRC Case No. RAB-I-0045-81 upholding the dismissal of petitioners.

The facts as narrated by the Labor Arbiter are as follows:

> "These cases of illegally dismissal were filed on December 11, 1981 by Anthony Farnican, Arthur Altatis and Ricardo Wangit

in the first case, No. 0044-81, and Jovencio Mina and Peter Atuban in the second case, No. 0045-81. They have been consolidated since the complainants have the same causes of action against the same respondent, Itogon-Suyoc Mines, Inc. The records do not show what was their respective pay when the complainants were all discharged on December 3, 1981.

"On November 20, 1981, between 11:00 p.m. and 11:45 p.m., herein complainants were allegedly caught in the act of highgrading. According to the respondent's version, five mine patrols proceeded to 14 Vein, 23 Position, 1400 Level underground. On their way, at about 11:00 p.m., the patrols met the respondent's mine engineer, leadman of the complainants, escorted by two security guards carrying two sacks of highgrade ore. With headlights off, the patrols went down the man way and when they reached the apprehension site, they saw the complainants breaking and pulverizing highgrade ores in the presence of the posted security guard. They observed the highgraders in (sic) five (5) minutes, and when the lookout miner noticed their presence and warned his companions: Adda tao!" — the mine patrols apprehended the complainants and recovered from the hands of the complainants were a plastic containing the highgrade ores, hammers and iron tubes being used in breaking the ores.

"One of the complainants allegedly bribed the apprehending officers (sic) P1,000.00 each to settle the manner (sic), but the guards refused the offer. Prior to the apprehension, the security guard (SG) on post, SG Freddie Bragado, allegedly warned the complainants to stop their illegal activity, but the complainants threatened him not to report them otherwise something would happen to him. Because of the threat, although he was then armed with a shotgun, SG Bragado, the guard on post and star witness of the respondent, became afraid. SG Bragado just left the complainants commit highgrading until the mine patrols arrived to apprehend the highgraders. Complainants were investigated, placed on preventive suspension on November 23, 1981 and subsequently dismissed on December 3, 1981.

> "In support of the foregoing allegations, the respondent submitted the sworn statements of Freddie Bragado, joint affidavit of the apprehending security guards, assay report that the recovered effects are highgrade, information and resolution of the fiscal and Order of the Municipal Court all showing prima facie case exists against complainants.
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> "The complainants, on the other hand, have another version. They worked under the supervision of Engr. Melchor Estonilo and security guards. At about 11:00 p.m., they were ordered to get out, and Engr. Estonilo padlocked their working place so they proceeded to take a crow's bath at the palace where they were apprehended. They denied the allegations of the apprehending security guards and charged them to be more interested in the reward of P100.00 per apprehension plus 30% percent of the value of the allegedly recovered highgrade. That when they were apprehended, the guard on post told the patrols why there were effecting the arrest when complainants had not dine anything illegal. That they were discharged illegally, without any just and valid cause. Hence, these complaints. In support of the foregoing allegations, they submitted sworn statements including that of SG Bragado" (Rollo, pp. 15-17).

On April 28, 1986, the Labor Arbiter rendered his decision finding that the complainants were illegally dismissed. The dispositive portion of the decision read:

> "WHEREFORE, in the light of the foregoing considerations, the respondent is hereby ordered to reinstate the five (5) complainants to their former respective position without loss of seniority rights with full back wages including ECOLA and 13th month pay for one year and four months, plus full back wages to be counted after the 10th day from receipt of this decision up to the time of their actual reinstatement. Respondent is also ordered to pay complainants ten "(10%) percent attorney's fees of the total amounts (sic) awarded.
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> "Respondent is finally ordered to present proof of compliance with this Order within ten (10) days from receipt of this decision" (Rollo, p. 19).

Private respondent appealed the decision of the Labor Arbiter to NLRC. On October 18, 1989, the Third Division of NLRC affirmed the Labor Arbiter's decision but limited the award of back wages to three years.

Between the rendition of the decision of the Third Division and the resolution denying the motion for reconsideration, a change in the membership of the division took place.

Administrative Order No. 161 dated November 18, 1989 of the Secretary of Labor and Employment reorganizes the NLRC and specified the place of assignment of the newly appointed commissioners. The new commissioners, Presiding Commissioner Lourdes C. Javier and Commissioner Ireneo B. Bernardo who were assigned to the Third Division, assumed their posts on November 20, 1989 while Commissioner Rogelio I. Rayala assumed his office on November 15, 1989.

In the motion for reconsideration filed by private respondent, the Third Division, as newly constituted, rendered its Decision dated November 29, 1990 setting aside the Resolution dated October 18, 1990 and declaring the dismissal from employment of complainants as valid.

Hence, this petition.

Petitioners claim that their motion for reconsideration should have been resolved by the same members of the Third Division who rendered the appealed decision.

We do not agree.

Under Article 213 of the Labor Code of the Philippines, as amended by R.A. No. 6715." Of the five (5) divisions [of the NLRC], the First and Second Division shall handle cases coming from the National Capital Region and the Third, Fourth and Fifth Divisions, cases from other parts of Luzon, from the Visayas and Mindanao, respectively. The divisions of the Commission shall have exclusive appellate jurisdiction over cases with their respective territorial jurisdiction"

Section 2(b), Rule VII of the New Rules of Procedure of NLRC, provides as follows:

x x x

> "b) Divisions. — Unless otherwise provided by law, the Commission shall exercise its adjudicatory and all other powers, functions and duties through its five (5) Divisions. Each Division shall consist of one member from the public sector who shall act as Presiding Commissioner and one member each from the workers and employers sectors, respectively.
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> "Of the five (5) Divisions, the First and Second Divisions shall have exclusive territorial jurisdiction over appeals of cases coming form the National Capital Region and they POEA; the Third Division, appealed cases from Luzon (Regions I, including the Cordillera Administrative Region, II, III, IV except Metro Manila and V); Fourth Division appealed cases from Visayas (Regions VI, VII and VIII); and, the Fifth Division, appealed cases from Mindanao (Regions IX, X, XI and XII, including those from the Mindanao Autonomous Region)" (Emphasis supplied).

Since petitioners are from Baguio City, the Third Division of NLRC correctly took cognizance of the appealed case. As many gleaned from the above-cited rules of NLRC, Baguio City is included in the Cordillera Administrative Region, which is assigned to the NLRC Third Division. Consequently, the motion for reconsideration filed by petitioners must also be also be resolved by said Third Division.

The law is clear that the jurisdiction to decide cases appealed to NLRC is vested in the different divisions thereof, not the individual commissioners assigned to each division. It is thereof of no significance as to who of the commissioners is functioning in the division at any given time. The only matter of concern is that the Commissioners voting on the motion for reconsideration were duly assigned to the division. By analogy , in the case of Pamintuan vs. Llorente and Dayrit, 29 Phil. 341 (1915), the Supreme Court stated that:

> "In ordinary parlance judges are spoken of as the courts and the courts are referred to, when the person speaking means the judge simply. It is common for persons, lawyers, and judges, as well as the law, to use these terms interchangeably. But, notwithstanding that fact, there is an important distinction between them which should be kept in mind. Courts may exist without a present judge. There may be a judge without a court. The judge may become disqualified, but such fact does not destroy the court. It simply means that there is no judge to act in the court. The courts of the Philippine Islands were created and the judges were appointed thereto later. In a few instances, the judges were appointed before the courts were established. A person may be appointed a judge and be assigned to a particular district or court subsequently. So it appears that there is an important distinction between the court, as an entity, and the person who occupies the position of judge" (at pp. 346-347).

Going now the claim that petitioner were illegally dismissed, we find and so hold that substantial evidence exists to warrant the findings that petitioners were engaged in highgrading.

It is well-established that factual findings of labor administrative officials, if supported by substantial evidence, are entitled not only to great respect but even to finality (Baguio Colleges Foundation vs. National Labor Relations Commission, 222 SCRA 604 [1993]; Capitol Industrial Construction Groups vs. National Labor Relations Commission, 221 SCRA 469 [1993).

It is not imperative that all the elements of highgrading or theft of gold as defined by Section 1 of P.D. No. 581 exist to justify respondent company's loss of trust and confidence in petitioners.

The job of petitioners, as miners, although generally described as menial, is nevertheless, of such nature as to require a substantial amount of trust and confidence on the part of respondent company. Since there is a reasonable ground to believe that petitioners committed the crime of highgrading, respondent company is justified in terminating their services.

WHEREFORE, the petition is **DISMISSED**. The Decision of NLRC dated November 29, 1990 is **AFFIRMED**.

SO ORDERED.

Padilla, Davide, Jr. and Kapunan, *JJ.*, concur.
Bellosillo, *J.*, is on leave.
