

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
THIRD DIVISION**

**PANAY ELECTRIC COMPANY, INC.,
*Petitioner,***

-versus-

**G.R. No. 102672
October 4, 1995**

**NATIONAL LABOR RELATIONS
COMMISSION, FOURTH DIVISION
AND PANAY ELECTRIC COMPANY
EMPLOYEES AND WORKERS
ASSOCIATION,**

Respondents.

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DECISION

VITUG, J.:

In this Petition for *Certiorari*, petitioner Panay Electric Company, Inc., seeks to set aside the questioned resolution of the National Labor Relations Commission (“NLRC”) in granting separation benefits to Enrique Huyan and Prescilla Napiar, in awarding moral and exemplary damages to Enrique Huyan, and in merely sanctioning the suspension, instead of terminating the employment status, of other officers and members of respondent labor union.

Here following is a factual backdrop of the case.

On 30 October 1990, petitioner Panay Electric Company, Inc., posted in its premises a notice announcing the need for a “Report Clerk” who could assume the responsibility of gathering accounting and computer data at its power plant. The position was open to any employee, “with Pay Class V,” of petitioner company. When nobody applied for the position, the EDP/Personnel Manager recommended Enrique Huyan who was at the time an Administrative Personnel Assistant at the head office. Huyan was then also a Vice President of respondent union. The recommendation was approved by the company’s President and General Manager.

In a letter, dated 09 November 1990, Enrique Huyan informed petitioner that he was not interested in accepting the new position. He gave the following reasons:

- “a. The manner or procedure of implementing this notice of transfer is skeptical since from Administrative Personnel Assistant to Report Clerk is apparently a demotion in my part.
- “b. The position of Report Clerk is Pay Class III per our Organizational Chart.
- “c. Being the Vice-President of PECEWA, my transfer would certainly hinder my function in settling labor matters and other problems with other PECEWA officers.
- “d. Currently, the activation of geothermal power plant in Palimpinon, Negros had gave rise to additional displaced workers in which my transfer would be another onus to the Power Plant supervisor and my lack of technical knowhow, I presumed would obstruct the flow of operation in the said department.”^[1]

On 20 November 1990, the EDP/Personnel Manager required Huyan to explain within 48 hours why no disciplinary action should be taken against him for gross insubordination and for failure to follow the General Manager’s approved directive. Eventually, on 03 December 1990, Huyan was given a “notice of dismissal” for:

- “1. Failure to comply with the GM’s general directive of 11/9/90 to a new assigned task in the Power Plant;
- “2. Failure to comply with your direct superior’s (AO) verbal directive to proceed to the Power Plant 11/10/90 & 11/19/90;
- “3. Failure to comply with the undersigned’s, as personnel manager, verbal directive to proceed to the Power Plant last 11/16/90;
- “4. Continued & unauthorized entry & use of the Personnel Section & property from 11/116/90 up to the present; (and)
- “5. Failure to report to your assigned task in the Power Plant for a period of more than seven consecutive days from November 16, 1990 up to the present.”^[2]

An administrative investigation was conducted; thereafter, Huyan was ordered dismissed effective 10 December 1990.

Respondent union, on 20 December 1990, filed a notice of strike. On 02 January 1990, a strike vote was taken where 113 out of 149 union members voted; the result showed 108 “yes” votes, 1 “no” vote, and 4 abstentions. On 22 January 1991, the union went on strike. Forthwith, the company filed a petition to declare the strike illegal. On 25 January 1991, upon receipt of an order from the Secretary of Labor and Employment certifying the dispute to the NLRC, the union lifted its strike and, on the day following, the striking employees, including Huyan, reported for work.

In its position paper and memorandum before the NLRC, the union averred that the real reason for ordering the transfer of Huyan was to penalize him for his union activities, particularly for being the suspected “Mao,” author of the column “Red Corner,” in the Union’s New Digest which featured an item on alleged wrong doings by top company officials at the power plant; that in a letter, dated 10 October 1990, addressed by the Company’s Operation Manager to the General Manager, it was suggested that an investigation of “Mao’s” real

identity be conducted and, once ascertained, to have him dismissed from the company; that the company had singled out Huyan for transfer to the power plant; that the Personnel Manager's recommendation for such transfer was made without Huyan's prior knowledge; that upon learning of his impending reassignment, Huyan requested for a reconsideration but the Personnel Manager did not bother to reply; that the transfer of Huyan was a demotion; and that, per the Company's Code Offenses, the "insubordination" charged was punishable with dismissal only after a fourth commission of the offense.

Petitioner company, in turn, maintained that Huyan's inexplicable refusal to assume his new position was an act of insubordination for which reason he was aptly dismissed; that the company's directive was a valid exercise of management prerogative; that in declaring a strike, the Union, including its officers and members, committed a serious breach of the "no strike, no lock out clause," of the Collective Bargaining Agreement ("CBA"); and that during the strike, illegal acts were committed by the union officers and members, e.g., —

- "a) union director Rey Espinal blocked the service vehicle of PECO collectors Domingo Tabobo and James Russel Balin, hurled invectives at them and challenged them to fight.
- "b) union (vice-president) Prescilla Napiar, together with union member Ma. Teresa Cruz approached PECO messenger Douglas Legada and snatched from him the envelope containing passbooks.
- "c) when PECO employees Carlos Miguel Borja and Joemar Paloma were on their way to deliver bank passbook to PECO messengers riding in the car of Willy Hallares, union (vice-president) Prescilla Napiar blocked their way at the gate and demanded that the car be inspected for PECO bills. An unidentified union member placed a big stone against the right front tire. Union auditor, Allen Aquino insisted on inspecting the glove compartment of the car."^[3]

The NLRB, in its resolution of 18 October 1991, concluded:

“WHEREFORE, in view of all the foregoing, we resolve as follows.

- “1. We find the strike conducted by the Union from January 22 to 25, 1991 to be illegal as the same was staged in violation of the no strike, no lock-out clause in the Collective Bargaining Agreement existing between the parties and also because the same disregarded the grievance procedure.
- “2. Enrique Huyan and Prescilla Napiar are deemed to have lost their employment status but they shall be entitled to separation benefits under the CBA, or one (1) month pay for every year of service, whichever is higher. Further, Enrique Huyan shall be paid the wages withheld from him, moral damages in the sum of TWENTY FIVE THOUSAND (P25,000.00) PESOS and exemplary damages in the amount of TEN THOUSAND (P10,000.00) PESOS.
- “3. Rey Espinal and Allen Aquino are penalized by suspension for THREE (3) months.
- “4. The other officers of the Union, namely: Nieva Glenna Abeto, Noel Orquinaza, Alex Atutubo, Federico Anatado, and Efren Lopez are penalized with suspension for ONE (1) month.

“No pronouncement as to costs.

“SO ORDERED.”^[4]

Petitioner assails NLRC’s decision insofar as it has adjudged monetary awards to private respondents Huyan and Napiar and in not sanctioning the dismissal of other union officers and members.

We begin by restating the well-settled rule that the findings of fact of the NLRC, except when there is a grave abuse of discretion committed by it, are practically conclusive on this Court.^[5] It is only when NLRC’s findings are bereft of any substantial support from the

records that the Court can step in and proceed to make its own and independent evaluation of the facts.

In rejecting petitioner's theory, the NLRC, in a carefully considered assessment, said:

“The company's contention that the decision to transfer Huyan was done in the normal course of business cannot be sustained in the light of the attendant circumstances.

“We note that the request of the Company's Operations Manager which was used as the basis for Huyan's transfer was made as early as June 18, 1990 but it was acted only on October 15, 1990 as shown by the handwritten notations thereon changing the designation of Computer Data Clerk to Report Clerk. Perhaps, it may only be a pure coincidence that such action came a few days after the Operations Manager made a strong recommendation to the General Manager to investigate and find out who 'MAO' is and to have him dismissed.

“The company argues that, contrary to the Union's claim, Huyan was not being singled out as shown by the fact that there was an announcement posted in all bulletin boards of the Company inviting applications for the position of Report Clerk at the power plant. on its face, this circumstance may indeed show bona fides on the part of the Company. However, the announcement limited those who are qualified to employees in the Pay Class V only and there were only 6 or 7 employees in the entire work force that can qualify. Again, maybe it is purely coincidental that Enrique Huyan was one of those in the Pay Class V. The point is, what is the logic and rationale behind posting a general announcement when the Company fully knows that only 6 or 7 out of over a hundred employees can qualify? To our mind, the posting of the announcement stands out as evidence of the Company's attempt to camouflage its plan to target Huyan. Not only that, even the Company's EDP/Personnel Manager admitted in his testimony that only Huyan had the best qualifications among the Pay Class V employees, thus:

“x x x.

“The conclusion is irresistible that even before the announcement was posted, the Company, or at least the EDP/Personnel Manager, knew that it was Huyan who will be transferred. After all, when the Company limited the choice to the Pay Class V employees, it can be assumed that the Company had already reviewed their qualifications.

“That indeed the plan was directed against Huyan is made more evident by the fact that the EDP/Personnel Manager did not even discuss the matter of the transfer with Huyan before, and even after, making his recommendation. This circumstance does not exactly speak well of the way the personnel policies of the company is being managed. It simply shows that the concern for the well-being and welfare of its employees is sorely lacking. It reduces the employees to mere pawns that can be sacrificed whenever the Company or its managers feel like it. We cannot understand why the Company will dispensed with this elementary courtesy on a very important matter affecting the work and even the future of the employee. This, by itself, is more than sufficient evidence to show the arbitrariness of the Company’s decision to transfer Huyan.

“We cannot also blame Huyan if he felt, at that time, that he was being demoted. The announcement did not state that the position of Report Clerk which was formerly Pay Class III had already been upgraded to Pay Class V. Of course, it may be argued that because only those employees with Pay Class V are qualified it follows that the position of Report clerk must be at least Pay Class V. However, it is the Company’s fault that it did not clarify this matter in the announcement. Perhaps had the EDP/Personnel Manager discussed the matter with Huyan before reassigning the latter, the misunderstanding could have been avoided. In fact, from Huyan’s letter to the EDP/Personnel Manager, it can be deduced that he did not know about the upgrading of the position. The least that the EDP/Personnel Manager could have done was to clarify the matter upon receipt of Huyan’s letter. However, it would appear that the

EDP/Personnel Manager was concerned of enforcing his recommendation to transfer Huyan more than anything else.

“As to the subsequent dismissal of Huyan, the grounds therefor arose out of the disputed transfer. There was never any official written notice addressed to Huyan concerning his reassignment. The Company’s evidence consists simply of the approved Memorandum from the EDP/Personnel Manager to the General Manager, a copy of which was furnished to the Union and Huyan. Why no official notice was ever given to Huyan baffles Us. Even granting for the sake of argument that such is a mere formality, it betrays the insensitivity of the Company for its employee for it expects him to rely on and act upon a piece of paper that is not even addressed to him. Circumstances like this, no matter how trivial, indicate the propensity of the Company to disregard the feelings of its employees. To top it all, the Company saw no need to respond to Huyan’s letter for reconsideration which was courteous and respectful.

“We grant that Huyan did not comply with the directives of the EDP/Personnel Manager to transfer. However, We find that his refusal to do so was not without reason or justification. As We see it, Huyan did not have it in his mind to be defiant, otherwise he would not have written his superior seeking reconsideration. He had to stand up for his rights and rightly so, considering the treatment he received. To our mind, therefore, in the context of the antecedent circumstances there was no serious misconduct or willful disobedience committed by Huyan that would warrant his dismissal. It is as if he was provoked into resisting by what he believed was an affront to his dignity as a union officer and as a human being. Neither could there be abandonment, as this concept is understood in termination disputes.

“Be that as it may, we cannot sustain the charge of unfair labor practice against the Company. As admitted by Huyan and the Union, the principal cause behind this controversy is the Company’s suspicion that Huyan was ‘MAO.’ That Huyan was the Union vice-president was purely incidental. Put in another way, any employee who was suspected of being ‘MAO’ would

have been the object of the Company's moves, irrespective of whether that employee is a union officer or not. Huyan was not pinpointed because he was a union officer or because the Company is anti-union but rather because of the suspicion that he wrote the column that caught the ire of the company's Operations Manager. No matter how detestable, the resultant moves of the company cannot be considered unfair labor practice.

"On the basis of the foregoing, we rule that while the conduct of the company cannot be strictly considered an unfair labor practice, still, the exercise of its management prerogative cannot be sustained. The dismissal of Enrique Huyan, is illegal. Ordinarily, when there is a finding of illegal dismissal, under Article 279 of the Labor Code, the employee is entitled to reinstatement and the payment of his backwages. However, in the case at bar, we are of the opinion that reinstatement cannot be ordered not only because of the strained relationship between the parties herein but also because Huyan's conduct as a union officer leaves much to be desired.

"X X X.

"Considering also the motivations and actuations of the company in orchestrating the transfer and dismissal of Huyan, we shall award Moral Damages in the sum of TWENTY FIVE THOUSAND (P25,000.00) Pesos, and Exemplary Damages in the amount of TEN THOUSAND (P10,000.00) PESOS. After all Huyan's dismissal was tainted with bad faith and the motive of the Company for dismissing Huyan was far from noble as shown by the circumstances surrounding the dismissal. The Company and its managers are admonished to change their attitude and manner in dealing with their employees, especially in matters such as this.

"X X X.

"The absence of good faith or the honest belief that the company is committing Unfair Labor Practice, therefore, is what inclines us to rule that the strike conducted by the union

from January 22 to 25, 1991 is illegal for being in violation of the no strike, 'no lock-out' proviso and the failure to bring the Union's grievance under the grievance procedure in the CBA."^[6]

The State guarantees the right of all workers to self-organization, collective bargaining and negotiations, as well as peaceful concerted activities, including the right to strike, in accordance with law.^[7] The right to strike, however, is not absolute. It has heretofore been held that a "no strike, no lock-out" provision in the Collective Bargaining Agreement ("CBA") is a valid stipulation although the clause may be invoked by an employer only when the strike is economic in nature or one which is conducted to force wage or other concessions from the employer that are not mandated to be granted by the law itself.^[8] It would be inapplicable to prevent a strike which is grounded on unfair labor practice. In this situation, it is not essential that the unfair labor practice act has, in fact, been committed; it suffices that the striking workers are shown to have acted honestly on an impression that the company has committed such unfair labor practice and the surrounding circumstances could warrant such a belief in good faith.^[9]

In the instant case, the NLRC found Enrique Huyan and Prescilla Napiar, the "principal leaders" of the strike, not to have acted in good faith. The NLRC said:

"It is bad enough that the Union struck despite the prohibition in the CBA. What is worse is that its principal leaders, Napiar and Huyan, cannot honestly claim that they were in good faith in their belief that the Company was committing unfair labor practice. The absence of good faith or the honest belief that the Company is committing Unfair Labor Practice, therefore, is what inclines us to rule that the strike Practice, therefore, is what inclines us to rule that the strike conducted by the Union from January 22 to 25 1991 is illegal for being in violation of the 'no strike, no lock-out' proviso and the failure to bring the union's grievances under the grievance procedure in the CBA. It must be borne in mind that prior the dismissal of Huyan, there was sufficient time to have the matter of Huyan's transfer subjected to the grievance procedure. That the Union considered the procedure an exercise in futility is not reason

enough to disregard the same given the circumstances in this case. Whatever wrong the Union felt the Company committed cannot be remedied by another wrong on the part of the Union.”^[10]

Given its own above findings, the NLRC’s grant of separation benefits and damages to Huyan and Napiar would indeed appear, to be unwarranted Article 264, Title VIII, Book V, of the Labor Code provides that “(a)ny union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status.”

In the case of the other union officers, however, the NLRC, having found no sufficient proof to hold them guilty of “bad faith” in taking part in the strike or of perpetrating “serious disorders” during the concerted activity, merely decreed suspension. We see no grave abuse of discretion by the NLRC in this regard and in not thus ordering the dismissal of said officers.

Finally, in the case of Huyan, we sustain the NLRC in holding that he, during the period of his illegal suspension (from 09 November 1990 when he, was effectively suspended until 25 January 1991 when he, along with the striking employees, were directed by the Secretary of Labor and Employment to return to the work premises), should be entitled to back salaries and benefits plus moral damages, but in the reduced amount of P10,000.00, in view of the findings of the NLRC; with which we concur, that petitioner company acted arbitrarily in its decision to transfer Huyan Exemplary damages, upon the other hand, are awarded only when a person acts in a wanton, fraudulent, reckless, oppressive or malevolent manner (Art. 2232, Civil Code). NLRC’s findings fall short of the underhandedness required so as to justify this award.

WHEREFORE, all considered, the questioned Decision of public respondent NLRC, dated 18 October 1991, is hereby **MODIFIED** in that the award of separation benefits in favor of Enrique Huyan and Prescilla Napiar is **DELETED**; the award to Huyan of moral damages is **REDUCE** to P10,000.00; and the grant of exemplary damages is

DELETED. The Decision is **AFFIRMED** in all other respects. No special pronouncement on costs.

SO ORDERED.

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

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- [1] Rollo, pp. 50-51.
[2] Rollo, pp. 51-52.
[3] Rollo, p. 276.
[4] Rollo, pp. 70-71.
[5] *Five J Taxi vs. NLRC*, 235 SCRA 556; *Inter-Orient Maritime Enterprises, Inc. vs. NLRC*, 235 SCRA 268; *Loadstar Shipping Co., Inc vs. Gallo*, 229 SCRA 654.
[6] Rollo, pp. 56-68A.
[7] Section 3, Article XIII, of the Constitution.
[8] *Master Iron Labor Union vs. NLRC*, 219 SCRA 47.
[9] See *People's Industrial and Commercial Employees and Workers Organization (FFW) vs. People's Industrial and Commercial Corporation*, 112 SCRA 430, 440.
[10] Rollo, p. 68-A.