SUPREME COURT
SECOND DIVISION

REMERCO GARMENTS MANUFACTURING,
***Petitioner*,**

-versus-

G.R. Nos. 56176-77
February 28, 1985

HON. MINISTER OF LABOR AND EMPLOYMENT and ZENAIDA BUSTAMANTE, LUZ RAYMUNDO and RUTH CORPUZ,
***Respondents*.**
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D E C I S I O N

CUEVAS, *J.*:

Petitioner Remerco Garments Manufacturing seeks the nullification of the Decision[1] of the Minister of Labor and Employment dated January 21, 1981, declaring the dismissal of Zenaida Bustamante, Luz Raymundo and Ruth Corpuz, (its employees) illegal, and ordering their reinstatement to their former positions without loss of seniority rights and privileges and with full backwages. The said decision set aside, on appeal, the Order[2] of Acting Director, National Capital Region, MOLE, dated March 6, 1978, granting petitioner's clearance application to terminate the employment of its three (3) employees.

Private respondents Zenaida Bustamante, Luz Raymundo and Ruth Corpuz were the employees of Remerco Garments Manufacturing, a domestic corporation engaged in the business of manufacturing and exporting of men's, ladies' and children's dresses.

This case arose from three (3) applications for clearance to terminate employment filed by the petitioner on three (3) separate dates. The first, against Ruth Corpuz filed on October 5, 1978 for allegedly defacing company's property by placing a check mark on a jacket with a chalk; the second, filed on October 16, 1978 against Luz Raymundo for insubordination for refusal to work on her rest day; and the third, against Zenaida Bustamante on November 10, 1980, for abandonment for failing to report for work after the expiration of her suspension on October 23, 1978. The said employees sought to be dismissed opposed the clearance application by filing separate complaints for illegal dismissal docketed as Case Nos. R4-STF-10-6695-78 and R4-STF-10-6670-78.

The antecedent facts appearing on record are as follows:

During the period of their employment with petitioner, Luz Raymundo and Zenaida Bustamante were given three consecutive warnings. The first, on June 24; then on July 24; and the third one, on October 15, 1978 for alleged refusal to render overtime work. Finally, they were penalized with one week's suspension effective October 16, 1978.

It appears that Luz Raymundo was required to work on October 15, 1978, a Sunday, despite her request for exemption to work on that Sunday, her rest day. Her request was disapproved. For failure to report for work despite denial of her request, she was notified of her dismissal effective upon expiration of her suspension. Thereafter or more specifically on October 16, 1978, petitioner filed a clearance application to dismiss her on grounds of insubordination. Raymundo opposed said application by filing a complaint for illegal dismissal and for money claims.

With respect to Zenaida Bustamante, she failed to report for work despite the expiration of her suspension on October 23, 1978.

Petitioner contends that said failure constitutes abandonment which it later invoke as ground for clearance application to dismiss her from employment filed on November 10, 1978. Like Raymundo, Zenaida Bustamante opposed the clearance application by filing a complaint for illegal dismissal claiming that her alleged failure to report for work was due to illness, as in fact, she was treated by one Dr. Lorenzo Yuson for fever and severe stomach ache on October 15, 1978.

Ruth Corpuz, like the two aforenamed co-respondents of hers, was also given a warning for refusal to render overtime work on another date, August 30, 1978. She was subsequently dismissed on October 4, 1978 for having written a chalk mark on a nylon jacket for export allegedly a violation of Rule 26 of petitioner's rules and regulations, which provides: "Employees are strictly prohibited from defacing or writing on walls of the factory, toilets or any other company property." The clearance application for her dismissal was filed only on October 5, 1978 which she also opposed by filing a complaint for illegal dismissal.

The case was submitted for conciliation proceedings, but no settlement was arrived at, whereupon, the Acting Director of National Capital Region, MOLE, required the parties to submit their respective position papers, after which, the case was deemed submitted for resolution.

On March 6, 1979, the Acting Director of National Capital Region, MOLE, issued an order granting petitioner's application for clearance to terminate the employment of private respondents and dismissing their complaints for lack of merit.

Private respondents appealed the order to the National Labor Relations Commission on March 22, 1979. Meanwhile, the Acting Director of the National Capital Region, MOLE, elevated the records of the case to the Labor Appeals and Review Staff, Office of the Minister of Labor on April 17, 1979.[3]

On January 20, 1981, the Minister of Labor rendered a decision reversing the appealed order and directed petitioner to reinstate private respondents Luz Raymundo, Zenaida Bustamante and Ruth

Corpuz to their former positions without loss of seniority rights and privileges and with full backwages.

Petitioner's motion for reconsideration was denied by the Minister of Labor in an Order[4] dated February 9, 1981.

Hence, this petition for certiorari.

After the Solicitor General and private respondents filed their respective COMMENTS on the petition in compliance with the resolution of this Court of March 16, 1981, petitioner filed on June 25, 1981 a Motion[5] which reads:

> "PETITIONER respectfully states that one of the private respondents, Ruth Corpuz de Leon, has executed a sworn statement manifesting her desire to withdraw the complaint against petitioner in Case No. R4-STF-10-6695-78, Region 4, Ministry of Labor, absolving petitioner from any and all of the charges contained in the complaint, and stating that she did not execute and sign the appeal to the respondent National Labor Relations Commission and had no intention of doing so and it was private respondent Luz Raymundo who signed her name on the appeal. A copy of the affidavit is hereto attached and made integral part hereof.
>
> WHEREFORE, it is respectfully prayed that an order issue vacating the decision of the respondent Minister of Labor and Employment, subject matter of the petition, insofar as it orders reinstatement of Ruth Corpuz de Leon without loss of seniority right and privilege and with full backwages, absolving petitioner from her complaint in Case No. R4-STF-10-6695-78, Region 4, Ministry of Labor and striking out the comment of private respondents in this case as to her."

In a Resolution[6] dated November 4, 1981, this Court, acting on the aforequoted motion, the Comment[7] of private respondents Luz Raymundo and Zenaida Bustamante thereon, and the Reply[8] of petitioner thereto, as well as the motion to dismiss[9] personally filed by Ruth Corpuz de Leon assisted by her husband Jesus de Leon and her complaint/claim which was confirmed by petitioner in its

Comment[10] on said motion to dismiss, GRANTED the dismissal of the complaint/claim of respondent Ruth Corpuz de Leon against petitioner.

Meanwhile, the petition was given due course.

Petitioner would want Us to annul the decision of the Minister of Labor assailed to have been rendered without and/or lack of jurisdiction, and in lieu thereof, sustain the order of the Acting Director of the National Capital Region, MOLE, granting the clearance application to dismiss Luz Raymundo, Zenaida Bustamante and Ruth Corpuz. As herein earlier stated, Ruth Corpuz had withdrawn her complaint/claim against petitioner, hence, the resolution of the instant appeal applies only to Luz Raymundo and Zenaida Bustamante, the two (2) remaining employees.

In support of the jurisdictional issue raised, petitioner contends that private respondents' appeal from the order dated March 6, 1979 of the Acting Director of the National Capital Region granting the application for clearance to dismiss them was not perfected on time for failure to furnish petitioner a copy of the appeal pursuant to Article 223 of the New Labor Code and Section 9, Rule XIII of its Implementing Rules and Regulations, thus making the order appealed from, final and executory. Further, it is the contention of petitioner that it was denied due process of law because it was not given the opportunity to present evidence to rebut private respondents' documentary evidence allegedly submitted only on appeal.

Stripped of procedural technicalities, the decisive issue before Us — is whether or not sufficient legal grounds exist under the relevant facts and applicable law to justify the dismissal of private respondents Luz Raymundo and Zenaida Bustamante.

Our answer is in the negative.

While it is true that it is the sole prerogative of the management to dismiss or lay-off an employee, the exercise of such a prerogative, however, must be made without abuse of discretion, for what is at stake is not only private respondents' positions but also their means

of livelihood. Basically, the right of an employer to dismiss an employee differs from and should not be confused with the manner in which such right is exercised. It must not be oppressive and abusive since it affects one's person and property.[11]

In the case of Luz Raymundo, she was charged of insubordination for allegedly refusing to work on a Sunday, October 15, 1978, which was her rest day. The records show that the day before, she requested exemption from work on that Sunday. In fact, she was granted a clearance slip (Exhibit "B") allowing her to be absent on that Sunday by her immediate supervisor (Department Head). She had a valid ground, therefore, not to work on that Sunday, and her failure to report that day can not be considered as gross insubordination. The disapproval of her request by top management reasonably creates the impression of a hostile attitude characterizing the efforts of petitioner (Management) of easing out with undue haste the services of private respondents. Besides, petitioner has not shown that Luz Raymundo's failure to report for work on that Sunday, October 15, 1978, constitutes one of the just causes for termination under Article 283 of the New Labor Code.

On the other hand, in the case of Zenaida Bustamante, she allegedly abandoned her employment by failing to report for work after the expiration of her suspension on October 23, 1978. Like Luz Raymundo, her one week suspension arose from her failure to report for work on a Sunday, October 15, 1978 which as explained in her opposition to the clearance application, was not without reason because on that day, she was ill and in fact treated by Dr. Lorenzo Yuson for fever and severe stomach ache as shown by the medical certificate (Exhibit "C"). On the consequent charge of abandonment, it must be noted that Zenaida Bustamante filed a complaint for illegal dismissal on November 15, 1978 to oppose the clearance application to dismiss her. Of course, it is a recognized principle that abandonment of work by an employee is inconsistent with the immediate filing of a complaint for illegal dismissal.[12] It would be illogical for Zenaida Bustamante to abandon her job and then immediately file an action seeking her reinstatement. At that time, no employee would recklessly abandon her job knowing fully well the acute unemployment problem then existing and the difficulty of looking for a means of livelihood.

The illegality of the dismissal of the herein private respondents, under the facts and circumstances disclosed, becomes even more apparent in the light of the express provision of the Constitution, requiring the State to assure the workers "security of tenure" and "just and humane conditions of work."[13] The constitutional mandate of security of tenure and just and humane conditions of work, both as aspects of the protection accorded to labor, militates against the severity of the sanction imposed on private respondents. The penalty of dismissal from the service, even assuming petitioner's charges to be true, is too severe a penalty. It is a penalty out of proportion to the offense committed - failure to report for work on a Sunday (October 15, 1978) - when after all, suspension would suffice. The dismissal came as an afterthought because private respondents were already suspended for one week. The lack of sympathetic understanding of the underlying reasons for their absence aggravated by the indecent haste attendant to the efforts of petitioner to terminate the services of private respondents portray a total disregard of the constitutional mandate of "security of tenure" and "just and humane conditions of work" which the State is mandated to protect. The New Labor Code is clear on this point. It is the duty of every employer, whether operating for profit or not, to provide each of his employees a rest period of not less than twenty four (24) hours after every six (6) consecutive normal work days.[14] Even if there really existed an urgency to require work on a rest day, (which is not in the instant case) outright dismissal from employment is so severe a consequence, more so when justifiable grounds exist for failure to report for work.

From the other standpoint, We find the objections raised grounded on procedural technicalities devoid of merit. The mere failure to furnish copy of the appeal memorandum to adverse party is not a fatal defect. We have consistently adhered to the principle clearly held in Alonso vs. Villamor[15] that "technicality when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from court." In a more forceful language, Mr. Chief Justice Enrique M. Fernando, speaking for the Court, in Meracap vs. International Ceramics Manufacturing Co., Inc.[16] stated "for the strictly juridical standpoint, it cannot be too strongly stressed, to follow Davis in his masterly work, Discretionary Justice, that where a decision may be made to rest on informed

judgment rather than rigid rules, all the equities of the case must be accorded their due weight. Finally, labor law determinations, to quote from Bultmann, should be not only secundum retionem but also secundum caritatem." More recently, we held that in appeals in labor cases, non-service of the copy of the appeal or appeal memorandum to the adverse party is not a jurisdictional defect, and does not justify dismissal of the appeal.[17] Likewise, it was held that dismissal of an employee's appeal on a purely technical ground is inconsistent with the constitutional mandate on protection to labor.[18]

Petitioner's belated claim of lack of jurisdiction on the ground that it was the Minister of Labor, and not the National Labor Relations Commission, which acted on the appeal pursuant to Article 217 of the New Labor, lacks merit. The records of the case were forwarded by the Acting Director of the National Capital Region to the Labor Appeals and Review Staff, Office of the Minister of Labor in an order dated April 17, 1979 with the knowledge of petitioner. Having failed to manifest its objection, but chose instead to await the decision of the Minister of Labor, petitioner is now estopped from questioning the exercise of jurisdiction by the Minister of Labor after an adverse decision have been rendered against it. We cannot countenance petitioner's stance of speculating on the possibility of a favorable decision from the Minister of Labor and later on question the latter's jurisdiction after an adverse decision.

As regards the due process argument, petitioner contend that it was denied the opportunity to cross-examine private respondents and rebut their documentary evidence allegedly submitted only on appeal. At the inception of the case however, both parties, after failing to arrive at an amicable settlement, agreed to submit their case for resolution on the basis of their respective position papers. While private respondents insisted on its claim that they have submitted their documentary evidence together with their position papers, petitioner, on the other hand, claim otherwise. Surprisingly though, it is only after the rendition of an adverse decision that petitioner now raised this matter of non-submission of documentary evidence. And petitioner did not insist on this alleged non-submission of evidence apparently because the Acting Director of the National Capital Region decided the case in its favor.

Even on the assumption that no documentary evidence was ever submitted by private respondents, still, on appeal, the entire record of the case was reviewed by the respondent Minister of Labor and in fact, decided the case on the merits. Besides, a motion for reconsideration filed by petitioner invoking due process cured the defect based on the alleged lack of procedural due process.[19] On its argument that it was denied the opportunity to rebut private respondents' documentary evidence allegedly submitted only on appeal, it is interesting to note that in the application for clearance to dismiss employees, the employer is required to present evidence before the former can present any contrary evidence. Petitioner's technical objections pointedly create an impression of the weakness of its stand or the merits of the case.

Notwithstanding the foregoing, We are convinced, after a closer examination of the records, that indeed there is no reasonable ground for the outright dismissal of Luz Raymundo and Zenaida Bustamante. Petitioner therefore is under obligation to REINSTATE Luz Raymundo and Zenaida Bustamante to their former or substantially equivalent positions without loss of seniority rights and privileges with three-year (3) backwages[20] to be computed from October 23, 1978, the date of expiration of their suspension.

WHEREFORE, finding the instant petition to be without merit, the same is hereby **DISMISSED**. The appealed decision of the Minister of Labor and Employment dated January 21, 1981 is hereby **AFFIRMED**.

Petitioner Remerco Garments Manufacturing is hereby ordered to reinstate Luz Raymundo and Zenaida Bustamante to their former or substantially equivalent position without loss of seniority rights and privileges with three-year (3) backwages computed from October 23, 1978.

No costs.

SO ORDERED.

Makasiar, Concepcion Jr., Abad Santos and Escolin, *JJ.*, concur.

Aquino, *J.*, took no part.

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[1] Annex "A", Petition, page 21, Rollo.
[2] Annex "D", Petition, page 31, Rollo.
[3] Annex "G", page 41, Rollo.
[4] Annex "H", Petition, page 42, Rollo.
[5] Page 71, Rollo.
[6] Page 120. Rollo.
[7] Page 78, Ibid.
[8] Page 94, Ibid.
[9] Page 104, Ibid.
[10] Page 117, Ibid.
[11] De Leon vs. National Labor Relations Commission, 100 SCRA 691, citing Macabingkil vs. Yatco, 21 SCRA 150.
[12] Judric Canning Corporation vs. Inciong, 115 SCRA 887 (1982).
[13] Article II, Section 9 of the 1973 Constitution.
[14] Art. 91, New Labor Code, as amended.
[15] 16 Phil. 315 (1910).
[16] 92 SCRA 412 (1979).
[17] Estrada vs. NLRC, 112 SCRA 688 (1982); J.D. Magpayo vs. NLRC, 118 SCRA 645 (1982).
[18] Pagdonsalan vs. NLRC, 127 SCRA 463 (1984).
[19] De Leon vs. Comelec, 129 SCRA 117 (1984); National Multi-Service Labor Union vs. Agcaoili, 64 SCRA 274; Maglasang vs. Ople, 63 SCRA 508.
[20] Mercury Drug Co., Inc. vs. CIR, 56 SCRA 694; People's Bank & Trust Co. vs. People's Bank & Trust Co. Employees Union, 69 SCRA 10; Citizen's League of Free Workers vs. CIR, 96 SCRA 225; Litex Employees Assn., et al vs. CIR, 116 SCRA 459.
