SUPREME COURT
FIRST DIVISION

RUBBERWORLD (PHILS.), INC. and ELPIDIO HIDALGO,
***Petitioners*,**

-versus-

G.R. No. 75704
July 19, 1989

THE NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISION) and NESTOR MALABANAN,
***Respondents*.**
x----------x

D E C I S I O N

MEDIALDEA, *J.*:

This is a Petition for *Certiorari* under Rule 65 of the Rules of Court seeking the annulment of the decision of the respondent National Labor Relations Commission dated June 17, 1986 (p. 23, Rollo) in NLRC NCR Case No. 6-2158-84 entitled "Nestor Malabanan and Jonathan Transmil, Complainants, versus Rubberworld (Phils.), Inc. and Elpidio Hidalgo, Respondents," reversing the decision of the Labor Arbiter which dismissed the complaint for illegal dismissal for lack of merit.

The antecedent facts are as follows:

Respondent Malabanan was employed by petitioner Rubberworld (Phils.), Inc. on September 25, 1978 as an ordinary clerk. In May, 1980, he was promoted to the position of production scheduler with a corresponding salary increase. He was again transferred to the Inventory Control Section as stock clerk on September 1, 1983.

On April 6, 1984, Elpidio Hidalgo, the Plant I General Manager of petitioner company, received a copy of the Financial Audit Report from the Internal Audit Department of the company showing a significant material variance between the year-end actual inventory and that of the Cards (SC)/EDP Control Records. As a result thereof, Noel Santiago, Section Head of the Inventory Control Section, where respondent Malabanan was assigned, conducted an investigation of the reported discrepancies in the stock cards upon the request of the Plant General Manager. Santiago then submitted his report to the general manager recommending the dismissal of respondent Malabanan.

Consequently, Malabanan's case was endorsed to the Human Resources Division of petitioner company, which conducted a reinvestigation on the matter and which affirmed the recommendation of the Inventory Control Section Head for the termination of employment of respondent Malabanan.

On June 6, 1984, respondent Malabanan was dismissed by petitioner company.

On June 16, 1984, respondent Malabanan, along with another complainant named Jonathan Transmil, filed a complaint for unfair labor practice and illegal dismissal against petitioner company alleging that they (respondent Malabanan and complainant Transmil) were members of the monthly salaried employees' union affiliated with TUPAS; that petitioner company forced them to disaffiliate from the union; and that due to their refusal to resign from the union, they were ultimately dismissed from employment by petitioner company.

Petitioner company on the other hand, denied complainants' allegations and averred that respondent Malabanan's dismissal was

due to gross and habitual neglect of his duty and not due to his union affiliation.

During the hearing of the case, the other complainant, Jonathan Transmil withdrew from the case since he already found another employment abroad.

On January 30, 1985, the Labor Arbiter rendered a decision (pp. 17-22, Rollo), the dispositive portion of which reads:

> "WHEREFORE, premises considered, this case should be, as it is hereby, DISMISSED, for lack of merit.
>
> "SO ORDERED."

Respondent Malabanan appealed from the adverse decision to the respondent Commission. On June 17, 1986, respondent Commission reversed the appealed decision of the Labor Arbiter and stated, inter alia:

> "Confronted with this factual backgrounds, we find ourselves inclined to the view that the appealed decision merits a reversal.
>
> x x x
>
> "WHEREFORE, premises considered, the appealed decision should be, as it is hereby REVERSED. Consequently, the respondents are directed to reinstate complainant Nestor Malabanan to his former position as production scheduler, with full backwages from the time he was illegally terminated up to actual reinstatement, without loss of seniority rights and benefits appurtenant thereto.
>
> "SO ORDERED." (pp. 23-27, Rollo)

The petitioner company moved for a reconsideration on the ground that the respondent Commission's decision is not in accordance with facts and evidence on record. On July 23, 1986, the said motion for reconsideration was denied.

On September 3, 1986, petitioner filed the instant petition contending that the respondent Commission committed grave abuse of discretion amounting to lack of jurisdiction in reversing the Labor Arbiter's decision.

The two issues to be resolved in the instant case are: (1) whether or not the dismissal of respondent Malabanan is tainted with unfair labor practice; and (2) whether or not a just and valid cause exists for the dismissal of private respondent Malabanan.

Petitioner alleges that the National Labor Relations Commission gravely erred in concluding that the demotion of Malabanan from production scheduler to a stock clerk at the Stock and Inventory Section was intended to discourage Malabanan from union membership. It argued that the Labor Arbiter was correct in finding that the private respondent had not shown ample proof to the effect that he was a member of a labor organization prior to his transfer to another position.

We believe that the foregoing contentions are impressed with merit. Art. 248 of the Labor Code, PD No. 442, as amended, provides:

> "Art. 248. Unfair labor practices of employers. — It shall be unlawful for an employer to commit any of the following unfair labor practices:
>
> (a) To interfere with, restrain or coerce employees in the exercise of their right to self-organization;
>
> "x x x"

The question of whether an employee was dismissed because of his union activities is essentially a question of fact as to which the findings of the administrative agency concerned are conclusive and binding if supported by substantial evidence. Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. It means such evidence which affords a substantial basis from which the fact in issue can be reasonably inferred (Philippine Metal Foundries, Inc. vs. Court of Industrial Relations, et. al., No. L-34948-49, May 15, 1979, 90

SCRA 135). The findings of the Labor Arbiter on the non-existence of unfair labor practice on the part of the company are more in accord and supported by the evidence submitted by the parties in the instant case, to wit:

> "Complainant had stated that he was a member of the monthly salaried employees union affiliated with TUPAS. He, however, offered no proof to support his allegation. In fact, no evidence was presented to prove the existence of such union. We [note] from the records that, as the usual practice, in cases like this one, complainant is usually supported by the union of which he is a member. And ordinarily, the union itself is impleaded as a co-complainant. Such circumstances, surprisingly, [are not present in this case. In fact, complainant categorically alleged that he had solicited the services of the PAFLU Labor Union in filing this case. It is, indeed, surprising that complainant had to solicit the help of a labor union (PAFLU) of which he was not a member instead of soliciting the aid of the labor union (TUPAS) of which he was allegedly a member. These circumstances alone [destroy] the credibility of complainant's allegations." (p. 21, Rollo).

Nowhere in the records can We find that the company actually performed positive acts to restrain the union participation of private respondent. For one, it is doubtful whether Malabanan was really engaged in the organization of a labor union affiliated with the federation TUPAS. The only evidence presented by him to prove this contention is his affidavit and that of his father. It is therefore, not in accordance with ordinary experience and common practice that the private respondent pursued his battle alone, without the aid and support of his co-members in the union and his federation especially in a case of serious nature as this one involving company intervention with union activity.

As a rule, it is the prerogative of the company to promote, transfer or even demote its employees to other positions when the interests of the company reasonably demand it. Unless there are instances which directly point to interference by the company with the employees' right to self-organization, the transfer of private respondent should be considered as within the bounds allowed by law. Furthermore,

although private respondent was transferred to a lower position, his original rank and salary remained undiminished, which fact was not refuted or questioned by private respondent.

In view of the foregoing conclusions of the Labor Arbiter, We are compelled to agree with the latter that the petitioner company did not commit any unfair labor practice in transferring and thereafter dismissing private respondent.

The remaining issue to be resolved on this point is whether the dismissal of respondent Malabanan was for a just and lawful cause. Article 282 of the Labor Code, as amended, provides:

> "Article 282. Termination by employer. An employer may terminate an employment for any of the following just causes:
>
> x x x
>
> b) Gross and habitual neglect by the employee of his duties;
>
> x x x"

Petitioner contends that private respondent Malabanan was guilty of gross negligence when he caused the posting of incorrect entries in the stock card without counter checking the actual movement status of the items at the warehouse, thereby resulting into unmanageable inaccuracies in the data posted in the stock cards. The respondent Commission correctly ruled:

> "Penultimately, even assuming for the sake of argument that herein complainant "posted entries in the stock card without counter checking the actual movement status of the items at the warehouse, thereby resulting in an inaccurate posting of data on the stock cards," to our impression does not constitute as a just cause for dismissal. Records show that he was only transferred to the Inventory Control Section on September 1, 1983 and was not so familiar and experienced as a stock clerk, and prior to his transfer, the record shows no derogatory records in terms of his performance. His failure to carry out efficiently his duties as a

> stock clerk is not so gross and habitual. In other words he was not notoriously negligent to warrant his severance from the service. Considering that there is nothing on record that shows that he wilfully defied instructions of his superior with regards to his duties and that he gained personal benefit of the discrepancy, his dismissal is unwarranted" (p. 26, Rollo).

It does not appear that private respondent Malabanan is an incorrigible offender or that what he did inflicted serious damage to the company so much so that his continuance in the service would be patently inimical to the employer's interest. Assuming, in gratia argumenti that the private respondent had indeed committed the said mistakes in the posting of accurate data, this was only his first infraction with regard to his duties. It would thus be cruel and unjust to mete out the drastic penalty of dismissal, for it is not proportionate to the gravity of the misdeed.

In fact, the promotion of the private respondent from the position of ordinary clerk to production scheduler establishes the presumption that his performance of his work is acceptable to the company. The petitioner even admitted that it was due to heavy financial and business reverses that the company assigned the private respondent to the position of Stock Clerk and not because of his unsatisfactory performance as production scheduler (p. 6, Rollo). It has been held that there must be fair and reasonable criteria to be used in selecting employees to be dismissed (Asiaworld Publishing House, Inc. vs. Ople, No. L-56398, July 23, 1987, 152 SCRA 219).

It is worthy to note that the prerogative of management to dismiss or lay-off an employee must be done without abuse of discretion, for what is at stake is not only petitioner's position, but also his means of livelihood. This is so because the preservation of the lives of the citizens is a basic duty of the State, more vital than the preservation of corporate profits (Euro-Linea, Phils., Inc. vs. NLRC, L-75782, December 1, 1987, 156 SCRA 79).

The law regards the worker with compassion. Our society is a compassionate one. Where a penalty less punitive would suffice, whatever missteps may be committed by the worker should not be visited by the supreme penalty of dismissal. This is not only because

of the law's concern for the working man. There is in addition, his family to consider. After all, labor determinations should not only be secundum caritatem but also secundum caritatem (Almira, et al., vs. BF Goodrich Philippines, Inc., et al., G.R. No. L-34974, July 25, 1974, 58 SCRA 120).

ACCORDINGLY, the petition is **DISMISSED** for lack of merit. However, the decision of the public respondent is hereby **MODIFIED** to the effect that petitioner company is ordered to reinstate private respondent Nestor Malabanan to the position of stock clerk or substantially equivalent position, with the same rank and salary he is enjoying at the time of his termination, with three years backwages and without loss of seniority rights and benefits appurtenant thereto.

Should the reinstatement of the private respondent as herein ordered be rendered impossible by the supervention of circumstances which prevent the same, the petitioner is further ordered to pay private respondent separation pay equivalent to one (1) month's salary for every year of service rendered, computed at his last rate of salary.

SO ORDERED.

Narvasa, Cruz, Gancayco and Griño-Aquino, *JJ.*, concur.