

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**SAN MIGUEL CORPORATION,
*Petitioner,***

-versus-

**G.R. No. 82467
June 29, 1989**

**THE NATIONAL LABOR RELATIONS
COMMISSION, PEDRO B. DELEN,
FELIPE P. MERCADO, ROGELIO Z.
MISOLAS, HENRY S. LOGAN & EFREN
M. QUERUBIN,**

Respondents.

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DECISION

GRÑO-AQUINO, J.:

This is a Petition for Review under Rule 65 of the Rules of Court of the Resolution dated December 15, 1987 of the National Labor Relations Commission (NLRC) in NLRC-NRC Case No. 6-2896-83, entitled "Pedro Delen, Felipe Mercado, Rogelio Z. Misolas, Henry S. Logan, Efren Querubin, Complainants versus San Miguel Corporation, Respondent," dismissing the appeal of the respondent corporation (now petitioner) and affirming in toto the decision dated March 17, 1986 of the Labor Arbiter, Ceferina J. Diosana, who found that the complaints (herein private respondents) were illegally

dismissed by the petitioner, and directed the latter “to reinstate them to their former positions without loss of seniority right and with full backwages and other benefits appurtenant to their respective positions” (Annex I).

We dismissed the petition on April 11, 1988 on the ground that it failed to show that the NLRC had acted with grave abuse of discretion in rendering its questioned resolution (p. 311, Rollo). The petitioner’s motion for reconsideration was prematurely denied by Us on August 29, 1988 (p. 416, Rollo). At that time, We inadvertently overlooked the fact that the petitioner had filed an omnibus motion on August 24, 1988: (1) for leave to file a reply to private respondents’ comment; and (2) to require private respondents to furnish petitioner a copy of page 5 of their comment (p. 345, Rollo). The petitioner’s consolidated reply to the separate comments filed by the NLRC and the private respondents (pp. 335-343 and 349-415, Rollo) was filed on September 21, 1988 (p. 417, Rollo). On October 14, 1988, the petitioner filed an “Extremely Urgent Motion for Leave of Court En Banc to File Appeal En Banc.” (p. 479, Rollo.)

While it is necessary to disabuse the mind of the petitioner of the impression that the Court En Banc is an appellate court within the Supreme Court to which parties may appeal decisions of the Division, for it is the same Supreme Court, and the referral of a case by a Division to the En Banc rests entirely in the discretion of the Division, We have decided to deny the plea for referral of this case so the Court En Banc, but instead, to treat the “appeal to the Court En Banc” (p. 479, Rollo) as a second motion for reconsideration of the resolutions of this Court dated April 11, 1988 and August 29, 1988.

The complainants were former security guards of the petitioner which dismissed them for falsification of their time cards. They made false entries in their time cards showing that they reported for work on February 19 and 20, 1983 when the truth was that they went on a hunting trip to San Juan, Batangas, with their chief, Major Martin Asaytuno, then head of the Administrative Services Department of the Security Directorate of the petitioner.

Besides the falsification of the entries for February 19 and 20, 1983 in their time cards, complainant Misolas was caught red-handed by

Security Guard Romeo Martin at 7:45 A.M. on March 2, 1983 punching-in not only his own time card but also the time cards of Delen and Querubin (p. 51, Rollo). Seeing Misolas in a tight fix, Querubin rushed to the bundy clock and punched in a time card (which turned out to be the card of one Rodrigo de Castro) to save Misolas and to make it appear to Martin that he (Querubin), punched in his own time card.

On the basis of the evidence, the Labor Arbiter found that the complainants did go on a hunting trip to San Juan, Batangas on February 19 and 20, 1983, upon the invitation of their department head, Major Asaytuno. They went along to please him because they believed that his invitation was equivalent to a command (p. 229, Rollo). Being an army man, Asaytuno expected "total obedience" from his subordinates (p. 229, Rollo). The complainants and Asaytuno left the office at 2:00 P.M. on February 19, 1983 and tarried in Batangas up to February 20. Asaytuno signed four (4) sets of overtime authority for February 19-20 so that the private respondents could collect overtime pay (p. 230, Rollo). When they reported for work on February 21, 1983, Major Asaytuno asked for their time cards and initialed the false entries showing that they reported for work on February 19-20 (p. 230, Rollo). The Labor Arbiter held that under those circumstances "the dismissal of the complainants cannot be sustained" (p. 230, Rollo).

With regard to the charge that complainants Misolas and Querubin dishonestly punched the time cards of Delen and others, the Labor Arbiter found "material discrepancies in the testimony of the petitioner's principal witness, Security Guard Romeo Martin, and rejected his evidence as 'questionable'" (p. 231, Rollo). The Labor Arbiter directed the company "to reinstate the complainants to their respective former positions without loss of seniority rights and with full backwages and other benefits appurtenant to their respective positions" (p. 232, Rollo) but dismissed the complainants' claim for damages for lack of merit (p. 233, Rollo).

The petitioner appealed to the NLRC, Third Division, which in a resolution dated December 15, 1987 (Annex K), dismissed the appeal for lack of merit and affirmed the appealed judgment (p. 269, Rollo).

The petitioner filed a motion for reconsideration which the NLRC denied on March 10, 1988 (Annex N).

The company filed a petition for review in this Court on March 25, 1988, alleging that the NLRC committed grave abuse of discretion in upholding the Labor Arbiter's decision and "in not finding that the private respondents were guilty of serious misconduct, fraud, and willful breach of trust" (p. 14, Rollo) which warranted their dismissal from the service.

As the decisions of the Labor Arbiter and the NLRC adverted to the testimony of Major Asaytuno as a witness for the company, but were silent regarding any disciplinary action that the company took against him, and as the petitioner admittedly put him on the witness stand "to clear his name," and considered him a "victim of his friendship with the complainants" (p. 19, Rollo), this Court was misled to believe that the company let Asaytuno, the "big fish" go, but penalized the "little fish" (his subordinates) for the misconduct that they all committed. Since We could not sanction that brand of selective justice, We dismissed the petition for review.

However, after a more careful consideration of the pleadings and their annexes, We found these statements in paragraph 19 of the petition for *certiorari* and in Annex J of the petition (petitioner's Appeal Memorandum in the NLRC):

"19. After a thorough and impartial investigation conducted both by the Security and Legal Directorate of the petitioner, private respondents, together with Major Asaytuno, were found to have committed serious irregularities in the performance of their duties. Accordingly, they were dismissed from the service and termination letters were respectively served on them." (p. 11, Rollo.)

"16. All the five (5) complainants together with Major Asaytuno were found to have committed serious irregularities in the performance of their duties. Accordingly, they were dismissed from the service and termination letters were respectively served on them." (p. 243, Rollo.)

We, therefore, now resolve to grant the petitioner's second motion for reconsideration, for, although it may be conceded that the private respondents acted under some degree of moral compulsion when they agreed to accompany Major Asaytuno on a hunting trip to San Juan, Batangas, they were certainly under no compulsion from him to falsify their time cards and thereby defraud the company by collecting wages for the dates when they did not report for work.

“In order for obedience to be considered as an exempting circumstance it must be in compliance with a lawful order not opposed to a higher positive duty of the subaltern, and that the person commanding act within the scope of his authority. As a general rule, an inferior should obey his superior. But between a general law which enjoins obedience to a superior giving just orders, etc., and a prohibitive law which plainly forbids what the superior commands, the choice is not doubtful.” (Viada, I Penal Code 528, 5th Ed.; People vs. Barroga, 54 Phil. 247).

“In order to be exempted (on the ground of obedience) it must be shown that both the person who gives the order and the person who executes it are acting within the limitations prescribed by law.” (People vs. Wilson, 52 Phil. 919.)

The falsification and fraud which the private respondents committed against their employer were inexcusable. Major Asaytuno's initials on the false entries in their time cards did not purge the documents of their falsity. Their acts constituted dishonesty and serious misconduct, lawful grounds for their dismissal under Art. 282, subpars. (a) and (c), of the Labor Code, which provides:

“ART. 282. Termination by employer. An employer may terminate an employment for any of the following just causes:

“(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work.

“(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative.”

The NLRC gravely abused its discretion in ordering the reinstatement of the private respondents to their positions with backwages. Its decision was an unjustified departure from the rule that:

“An employer cannot legally be compelled to continue with the employment of a person who admittedly was guilty of misfeasance or malfeasance towards his employer, and whose continuance in the service of the latter is patently inimical to his interests. The law, in protecting the rights of the laborer, authorizes neither oppression nor self destruction of the employer.” (Manila Trading & Supply Co. vs. The Hon. Francisco Zulueta, et al., 69 Phil. 485, cited in San Miguel Brewery, Inc. vs. National Labor Union, et al., 97 Phil. 387.)

WHEREFORE, our Resolutions dated April 11, 1988 and August 29, 1988 are hereby recalled and the Petition for *Certiorari* is granted. The Decisions of the Labor Arbiter and the NLRC in NLRC-NCR Case No. 6-2896-83 are hereby set aside. The private respondents' complaint for illegal dismissal and reinstatement with backwages and damages is dismissed. Costs against the private respondents.

SO ORDERED.

Narvasa, Cruz, Gancayco and Medialdea, JJ., concur.