

DISTRIBUTION & CONTROL PRODUCTS INC./VINCENT M. TIAMSIK, PETITIONERS, V. NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISION), JEFFREY E. SANTOS, RESPONDENTS.

Ponente: REYES, JR., J.C., J.

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REYES, JR., J.C., J.:

Before us is the motion for reconsideration filed by the petitioners.

In their motion, the petitioners aver that there are several cases decided by the Supreme Court where separation pay was denied because the employee was dismissed for a just cause, which they claim is similar to the present case.

We do not agree. The complaint filed by Santos was for constructive dismissal because he was put on preventive suspension, informed that he would be “notified of the decision of management regarding the status of your employment immediately after a resolution of the case is received”[1], but was never notified of his dismissal from employment. He filed his complaint seven months after his preventive suspension.

As stated by the NLRC in its Decision[2]:

There is no doubt that respondent has admitted in their Reply that no show-cause memorandum or notice and hearing was issued to the complainant. Respondent relied only on the fact that, they have instituted a criminal complaint for Qualified Theft that would require the filing by complainant of his counter-affidavit or an explanation as to why complainant should not be charged of the said crime, is enough and complies with the twin requirement of notice and bearing. This is not so.

The criminal offense is separate and distinct from the requirements of due process in disciplinary and terminating employees under the Labor Code. The due process of notice and hearing required in the Labor Code is mandatory and cannot be waived nor be set aside and superseded or taken over by the criminal proceeding. As we have said, the suspension or termination case can stand on its own separate from other cases whether criminal or civil. In short, the mandatory requirement of due process: notice and hearing is independent and separate from the due process requirement in criminal cases. Thus, noncompliance of the former is a fatal defect.

Besides, as correctly found by the Labor Arbiter, the record and evidences presented by respondents have failed to show that the said charges imputed against the complainant were proven and that complainant was fully informed and heard with regard to the accusations. Since the respondent as an employer, is burdened to prove just cause for terminating the employment of complainant with clear and convincing evidence, and that respondent failed to discharge this burden, We hold that complainant was dismissed without just cause by respondent.

The original petition filed by the petitioners was a petition for certiorari under Rule 65 of the Rules Court where our review is limited to issues of jurisdiction or grave abuse of discretion that equates to an excess of jurisdiction.

We found no grave abuse of discretion on the part of the NLRC when it rendered its assailed resolution and decision.

WHEREFORE, premises considered, the motion for reconsideration is DENIED for lack of merit.

SO ORDERED.

Lopez and Inting, JJ., concur.

[1] Notice of Suspension, Rollo, p. 74.

[2] Decision, Rollo, pp. 40-41.

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