

RAMON M. ABIERA, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND PLANTERS BANK, RESPONDENTS.

G.R. No. 102023. November 06, 1992

Ponente: CRUZ, J.

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CRUZ, J.:

Petitioner Ramon Abiera was the Manager of the Roxas City branch of private respondent Republic Planters Bank (RPB) at the time of his dismissal on April 28, 1987, on the ground of loss of confidence.

The said branch had earlier been the subject of an audit by the internal auditors of RPB's head office. Sometime thereafter, in August 1986, Abiera applied for vacation leave for about two weeks "to take a much needed rest."

Upon his return, the petitioner received a memorandum from the Executive Vice President of the respondent bank requiring him to submit his response to the internal audit report. The report suggested his possible participation in the violations therein noted.

He was not allowed in the meantime to resume his position. Instead, RPB extended his leave of absence from September 12, 1986 to October 12, 1986, then to November 12, 1986, and finally to December 12, 1986.

After submitting his response to the audit examination report, Abiera received a memorandum containing the following Specification of Charges which he was required to explain:

1. Over-financing in the amount of P2,573,000.00.
2. Approval of loan advances to a certain Manuel Alparanque in violation of RPB's policy prohibiting the grant of new loans to clients with past due accounts.
3. Continuous loan approval/releases to the spouses Rebecca/Edmund Ibañez despite full knowledge of the defect of their title to the mortgaged properties.
4. Entering into a contract manifestly and grossly disadvantageous to the Bank in the repair of the ceiling/mezzanine floor of its Roxas branch.
5. Insuring in excess of the market value of mortgaged collaterals and properties not offered as collaterals without advising the planter-borrowers concerned.
6. Advancing the payment of the insurance premiums without prior clearance and approval from management and in gross violation of RPB's existing policy on the matter.
7. Violation of the Bank's domestic travel policy.

These acts were claimed to have been committed by the petitioner in violation of the following sections of RPB's Code of Discipline:

Section 2. - Entering in behalf of the Bank into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the officer or employee profited or will profit thereby.

Section 12. - Serious violation of any established loan policy, office procedure/practice of the Bank with or without loss or damage to the Bank.

The Specification of Charges also advised him as follows:

In view hereof, you are hereby requested to appear before the Investigating Committee on December 18, 1986 at 3:00 p.m. at the Executive Lounge, Legazpi Towers 300, Roxas Blvd., Manila, to explain why you will not be held liable for violations of the specified provisions of the Code of Discipline. You may bring your lawyer who can assist you during the hearing. (Underscoring supplied)

The hearing was re-scheduled to January 9, 1987, at his request, and he appeared thereat without counsel. RPB claims that the Investigating Committee asked him if he desired the assistance of counsel and that he manifested he was waiving the same.

For his part, Abiera has consistently alleged that after service of the Specification of Charges upon him, he received a memorandum from Regional Manager Eriberto Garcia informing him of only a preliminary hearing of his case on December 18, 1986.

Abiera says that since he had been called to only a preliminary hearing and believing that it would be informal, he saw no need to bring a lawyer. Thus, when the hearing was held on January 9, 1987 (as re-set), he was not represented by counsel.

On January 12, 1987, the petitioner was notified of his preventive suspension for thirty days without pay. He formally protested, averring that the "preliminary hearing" was procedurally defective for the following reasons:

1. Thinking that the hearing was merely a fact-finding exercise preliminary to an administrative hearing, he did not bring along legal counsel. Such hearing proceeded without providing him with any legal assistance.
2. The composition of the Committee and the role of its members in the hearing were not made known to him.
3. The hearing was held without benefit of a formal reply from him, and the auditors who prepared the report on which the charges were based did not swear to the truth of their report.
4. The hearing was inquisitorial in nature and he was not given a chance to constructively present his side.
5. He was not allowed to hear and confront the witnesses against him and to present his own evidence.
6. The evidence on which the auditors based their findings and conclusions was not explained.

The petitioner says he demanded from RPB access to the branch records, copies of the transcript of the hearings, the opportunity to confront the witnesses against him, the services of a legal counsel, and such other rights appertaining to him in an administrative case, but his demand was ignored.

On February 4, 1987, additional charges were filed against the petitioner, this time concerning irregularities in the disposition of domestic sugar quedans for calendar year 1985-1986. RPB sent him a directive to file an answer. The petitioner refuted these new charges in writing. Thereafter, the Investigating Committee submitted its findings to the management and recommended his dismissal. Accordingly, RPB sent him a Notification of Termination on April 7, 1987.

Still protesting his innocence, the petitioner demanded withdrawal of the notification but RPB refused. Abiera then filed a complaint for illegal dismissal against the private respondent. After considering the evidence submitted by both parties, Labor Arbiter Ma. Sol Monteclaro-Manalo found for him and ordered his reinstatement with back wages.[1] On appeal to the NLRC, however, the decision was reversed[2] and the motion for reconsideration was subsequently denied.[3] The petitioner then came to this Court for relief.

The petitioner assails the findings of the NLRC and maintains that RPB failed to comply with the requirements of due process in effecting his dismissal.

We do not agree.

The twin requirements of notice and hearing constitute the essential elements of due process. There is a long line of decisions to the effect that neither of these elements can be omitted without running afoul of the constitutional guaranty.[4]

We hold that the first element was not violated because the petitioner was duly notified of the Specification of Charges and invited to appear at the hearing scheduled for their investigation. He was even advised to bring a lawyer with him if he so desired.

The requirement for hearing was also observed. The petitioner cannot say he was deprived of this right because the record shows he was duly afforded ample opportunity to defend himself and introduce evidence on his behalf.

Sec. 5 of Rule XIV, of the Implementing Rules and Regulations of the Labor Code, provides:

Sec. 5. Answer and Hearing. The worker may answer the allegations stated against him in the notice of dismissal within a reasonable period from receipt of such notice. The employer shall afford the worker ample opportunity to be heard and to defend himself with the assistance of his representative, if he so desires.

"Ample opportunity" connotes every kind of assistance that management must accord the employee to enable him to prepare adequately for his defense, including legal representation.

Abiera says he believed that the hearing to which he was invited was only preliminary and so would not require the presence of his lawyer. Even so, he was not precluded from asking for the suspension of that hearing after he realized that he was already being "grilled," as he put it, in a formal investigation.

It is also not true that the petitioner had not been given a chance to defend himself. The established fact is that he did this verbally and through written replies to the internal audit report and the additional charge against him. The Court especially notes his point-by-point refutation dated September 18, 1986.[5] His explanation was quite detailed and belies his claim that he was not given access to the private respondent's records.

A formal trial-type hearing is not at all times and in all instances essential to due process. It is enough that the parties are given a fair and reasonable opportunity to explain their respective sides of the controversy and to present supporting evidence on which a fair decision can be based. According to *Llora Motors Inc. vs. Drilon*,[6] this type of hearing is not even mandatory in cases of complaints lodged before the Labor Arbiter. And in *Sajonas vs. NLRC*,[7] we observed as follows:

Finally, on the matter of due process which petitioners claim was denied them by private respondent during the investigation which led to their dismissal, we agree with respondents that although the aforesaid investigations were not conducted in the manner of a regular trial in court, the elements of due process, namely, the right to be informed of the charges, to be present and to be heard, were accorded petitioners. In said investigations, petitioners freely and voluntarily answered the questions and even made further statements in their defense during the concluding stages thereof.

Commenting on the same topic, we said earlier in *Zaldivar vs. Sandiganbayan*: [8]

Due process as a constitutional precept does not, always and in all situations, require trial-type proceedings. The essence of due process is to be found in the reasonable opportunity to be heard and to submit any evidence one may have in support of one's defense. "To be heard" does not only mean verbal arguments in court. One may be heard also through pleadings. Where opportunity to be heard, either through oral arguments or

pleadings, is accorded, there is no denial of procedural due process.

The parties could have held a trial-type hearing, but they decided instead to submit the case for decision on the basis of the position papers, documentary evidence and other pleadings already submitted before the Labor Arbiter. This arrangement was mutually agreed upon by them during the hearing held on July 27, 1989, and is authorized under Article 221 of the Labor Code.[9]

It is true that the right of confrontation is embraced in due process and that the petitioner did demand the appearance of the internal auditors so he could cross-examine them. It is also true that this demand was rejected by the Investigating Committee. Nevertheless, the petitioner saw fit not to insist on this right and in fact subsequently waived it when he agreed at the said hearing on the above-discussed procedure.[10]

Regarding the ground for his dismissal, we find that the NLRC correctly sustained the Investigating Committee in concluding that the petitioner, as branch manager, violated RPB's Code of Discipline through the numerous transactions he entered into or approved that caused detriment to the bank and its clients. The charges were either expressly admitted by him or established by preponderant evidence. His conduct caused the private respondent to lose confidence in his judgment and even his integrity and provided the just cause for his dismissal as branch manager. Article 282(c) of the Labor Code plainly states:

Art. 282. Termination by employer. - An employer may terminate an employment for any of the following causes:

x x x

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

It is clear that the public respondent has committed no grave abuse of discretion that would warrant the reversal of its decision sustaining the petitioner's dismissal. There was justified loss of confidence in him by the respondent bank. In view of the nature of its business, the bank had every reason to demand that the conduct of the petitioner, who was holding a sensitive and responsible position, be entirely above-board and fully deserving of its trust.

Accordingly the petition is DISMISSED, with costs against the petitioner. It is so ordered.

Padilla, Griño-Aquino, and Bellosillo, JJ., concur.
Medialdea, J., on leave.

[1] Rollo, p. 106.

[2] Ibid., p. 116

[3] Id., p. 118.

[4] Century Textile Mills, Inc. v. NLRC, 161 SCRA 528 (1988); (1988); Gold City-Integrated Port Services, Inc. v. NLRC, 189 SCRA 811 (1990), Kwilway Engineering Works v. NLRC, 195 SCRA 526 (1991).

[5] Annex "4," Records, Vol. 2, pp. 45-50.

[6] 179 SCRA 175 (1989).

[7] 183 SCRA 182 (1990).

[8] 166 SCRA 313; 337-338 (1988).

[9] San Miguel Corporation v. NLRC, 173 SCRA 314 (1989).

[10] TSN, July 27, 1989, Records, Vol. 2, pp. 344-347.

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