

## **RADIO COMMUNICATIONS OF THE PHILIPPINES, INC. (RCPI), PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND TERESITA P. CANSINO, RESPONDENTS.**

*G.R. No. 102958. June 25, 1993*

Ponente: DAVIDE, JR., J.

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### **DAVIDE, JR., J.:**

Assailed in this special civil action for certiorari, for having been allegedly issued with grave abuse of discretion amounting to lack or excess of jurisdiction, is the 30 September 1991 Decision of public respondent National Labor Relations Commission (NLRC)[1] in NLRC Case No. NCR-00-01-00160-89. The NLRC reversed the Labor Arbiter's decision of 27 April 1989 which in turn dismissed the private respondent's complaint for illegal dismissal against the petitioner solely on the ground of laches.[2]

The dispositive portion of the public respondent's challenged decision reads as follows:

"WHEREFORE, premises considered, the decision dated 27 April 1989 is hereby REVERSED; the judgment rendered therein dismissing the above-entitled complaint is hereby SET ASIDE; and, judgment is hereby rendered DECLARING illegal and without valid cause the dismissal of complainant Teresita P. Cansino from RCPI employment and ORDERING Radio Communications of the Philippines, Inc. to reinstate her without loss of seniority and to pay her the aforesated total amount of FIFTY SEVEN THOUSAND ONE HUNDRED NINETY FIVE AND 17/100 PESOS (P57,195.17) representing her backwages for three (3) years, without qualification or deduction.

SO ORDERED."[3]

The material operative facts disclosed by the pleadings of the parties and the appealed decision are not disputed.

Private respondent Teresita P. Cansino was the petitioner's employee from May of 1975 until 23 November 1985, when she was terminated from her employment. At the time of her termination, Teresita was a Teletype counter-clerk at the petitioner's sub-counter at Farmer's Plaza, Cubao, Quezon City.

It appears that on 5 November 1985, the petitioner issued a memorandum to the private respondent placing the latter under preventive suspension for (a) alleged cash shortages in the amount of P174.00 representing the collections for 4 and 8 October 1985, (b) withholding thirteen (13) telegrams and (c) altering dates of receipts and the filing dates of telegrams. Teresita was also ordered to explain within twenty-four (24) hours from receipt of the memorandum why her services should not be terminated for misappropriating company funds and withholding messages for transmission.[4]

On 7 November 1985, private respondent submitted her explanation.[5]

Thereupon, the petitioner's Vice-President for Resources, Nilo G. Palabrica, sent the private respondent on 23 November 1985 a second memorandum this time dismissing her from the service.[6] Pursuant, however, to the provisions of an existing collective bargaining agreement, the matter was first submitted to a grievance machinery

composed of a representative of the petitioner and the bargaining representative of the employee. The union sought the private respondent's reinstatement for humanitarian considerations.[7] Consequently, since no favorable action resulted from the last meeting held on 14 December 1988, the private respondent filed on 10 January 1989 a complaint for illegal dismissal against the petitioner with the National Capital Region Branch of the NLRC.[8] The case was docketed as NLRC Case No. NCR-00-01-00160-89.

Appropriate proceedings in accordance with law, with the parties submitting their evidence via position papers, were held before Labor Arbiter Cornelio L. Linsangan. On 27 April 1989, the latter rendered a decision which, as earlier stated, dismissed the complaint on the ground of laches. The pertinent portion of the decision reads:

"While we are not inclined to sustain the validity of complainant's dismissal for we find her infractions as not too serious enough to merit a supreme penalty, yet we deeply regret that we can not rule in her favor.

We agree with respondents that complainant is guilty of laches, if at all her cause of action has not prescribed as yet. Complainant slept on her right too long. As cited in respondent's rejoinder, the Supreme Court has ruled that an employee who filed his claim for reinstatement only after the lapse of seventeen (17) months after his dismissal, is guilty of laches (national Shipyards and Steel Corporation vs. Court of Industrial Relations, L-21675, May 23, 1967, 20 SCRA 134).

WHEREFORE, judgment is hereby rendered dismissing the above-entitled complaint."[9]

Only the private respondent appealed the said decision to the public respondent NLRC.

On 30 September 1991, the NLRC promulgated its decision reversing the Labor Arbiter's ruling. In declaring illegal the dismissal of the private respondent and ordering her reinstatement with backwages for three (3) years, the NLRC held, firstly, that the private respondent was not guilty of laches because her case was submitted to the grievance machinery which had its last deliberation on 14 December 1988, and the complaint for illegal dismissal was filed on 10 January 1989, or after the lapse of only thirty-eight (38) days from such deliberation. Secondly, it found:

"x x x only minimal support for the alleged shortages of x x x P131.00 and P43.00, x x x and manipulation through non-observance of consecutive issuance of cash telegram receipts and altering filing dates of telegrams and/or cash receipts; absent a showing from the record, viz:

- (a) copy of report of the auditor making the findings on P131.00 and P43.00 shortages;
- (b) copy of even only one of the aforestated cash telegram receipt, relative to its manipulation;
- (c) copy of even only one of the telegrams so filed and/or of the cash receipts relative to their alteration;"[10]

Thirdly, it observed that:

"x x x the record fails to support misappropriation of company funds (in the absence of the factual report of the auditing officer respecting the P131.00 and P43.00 'shortages'), failure to strictly observe company policy on proper cash handling and standard accounting procedure (in the absence of the formulated company policy thereon), alteration/ falsification of company records (in the absence of specific cash receipt, telegram filed, or other similar record."[11]

It then concluded that the private respondent has been "nothing more than a 'counter clerk'" for ten (10) years and her alleged gross dishonesty, negligence or loss of trust and confidence had been only shown "as being incidental to clerical clearing of telegrams filed for transmission, which is her main function/responsibility." The petitioner failed to present proof of her specific duties and responsibilities as a "counter clerk."

Dissatisfied with the public respondent's decision, petitioner filed this special civil action for certiorari. In support

of its grievance that the public respondent acted with grave abuse of discretion, it alleges that the private respondent (a) committed acts of dishonesty warranting her dismissal; she should not be reinstated; and (b) applying *National Shipyards and Steel Corporation vs. Court of Industrial Relations*,<sup>[12]</sup> is guilty of laches in that although she was dismissed on 23 November 1985, she filed her complaint for illegal dismissal only on 10 January 1989.

After both the public and private respondents filed their separate comments to the petition as required in our Resolution of 13 January 1992, and the petitioner its reply to the comment of the public respondent, we, in the Resolution of 8 June 1992, gave due course to the petition; required the parties to submit their respective memoranda; and finally issued a temporary restraining order after the petitioner put up a cash bond of P57,195.70.

Some novel issues set forth in the instant petition need to be addressed. For one, the petitioner squarely raises the issue of laches on the part of the private respondent. Furthermore, the public respondent submits that since the petitioner did not appeal from the Labor Arbiter's decision, it is now estopped from questioning the latter's findings that the validity of the private respondent's dismissal cannot be sustained for her infractions were not too serious to merit the supreme penalty of dismissal.

The factual and procedural antecedents in this case render a bit ludicrous the claim of laches. As earlier pointed out, the private respondent was dismissed on 23 November 1985. The matter of her dismissal was then referred to the grievance machinery which had a final meeting on 14 December 1988. The complaint for illegal dismissal was subsequently filed on 10 January 1989. The aforesaid referral was initiated pursuant to a provision in the existing collective bargaining agreement. Such a provision was incorporated in compliance with then Article 262 of the Labor Code (P.D. No. 442, as amended) which provided:

"ART. 262. Grievance machinery. -? Whenever a grievance arises from the interpretation or implementation of a collective agreement, including disciplinary actions imposed on members of the bargaining unit, the employer and the bargaining representative shall meet to adjust the grievance. Where there is no collective agreement and in cases where the grievance procedure as provided herein does not apply, grievances shall be subject to negotiation, conciliation or arbitration as provided elsewhere in this Code."

This article has undergone substantial amendments, the last of which was by Section 26 of R.A. No. 6715 which, aside from renumbering the provision (as Article 260), describes with particularity the details of a grievance machinery.

In a very real sense, the aforementioned referral could be considered as a part of appellate procedure. Hence, it may be asserted that the pendency of the matter thus referred may even affect the ripeness of a cause of action for illegal dismissal in that when parties submit to the grievance procedure, the institution of a complaint for illegal dismissal with the Labor Arbiter, prior to the grievance machinery's having resolved the referred matter, would be premature. It therefore follows that the private respondent's waiting until after 14 December 1988 before seeking redress for her dismissal was not thereby diminished or impaired by laches. Laches is the "failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it."<sup>[13]</sup> The defense of laches "is not dependent on the existence of a statutory period of limitation. It can be invoked without reckoning any specific or fixed period; it is sufficient that there be an unreasonable and unexplained delay in bringing the action that its maintenance would already constitute inequity or injustice to the party claiming it."<sup>[14]</sup> For laches to be present, four (4) important elements must concur, viz.: (1) conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation of which the complaint is made and for which the complaint seeks a remedy; (2) delay in asserting the complainant's rights, the complainant having had knowledge or notice

of the defendant's conduct and having been afforded an opportunity to institute a suit; (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and (4) injury or prejudice to the defendant in the event relief is accorded to the complainant, or the suit is not held to be barred.[15] In the instant case, it cannot be said that there was delay -- undue or otherwise -- on the part of the private respondent in filing the complaint because she had merely awaited the final outcome of the grievance machinery. She could not have instituted the complaint for illegal dismissal prior to such final determination because if she did, her suit would have been premature. Her grievance remained very much in active status and the petitioner was fully cognizant of such fact. She could not, therefore, be charged with laches. Such a conclusion is further supported by the fact that since the petitioner was itself a party in the grievance proceedings, it was well aware that any disposition on the matter that was unfavorable to the private respondent would, in all probability, be met with the latter's filing of a complaint for illegal dismissal. Elsewise stated, it cannot be gainsaid that the petitioner was in no way led to believe that the private respondent would not have taken any further action to protect her rights in the event that the results of the grievance procedure would be adverse to her.

Finally, no injustice or inequity would have been caused to the petitioner by the maintenance of the action which was filed within a reasonable time after the final action of the grievance machinery. It should be noted that given the circumstances obtaining in this case, the delay, for the purpose of determining the existence of laches, must be reckoned from the final act of the grievance machinery. A contrary view would only serve to defeat the very purpose of the grievance procedure.

The petitioner's reliance on *National Shipyards and Steel Corporation (NASSCO) vs. Court of Industrial Relations*[16] is misplaced. In that case, this Court categorically ruled that the NASSCO is a corporation owned and controlled by the government and that the private respondent therein, Domingo de Jesus -- employed by NASSCO as a welder -- belonged to the unclassified service and was covered by the Civil Service Law. Being a government employee, de Jesus should have instituted his court action for reinstatement within one (1) year from his removal or separation.[17] Since he filed his action only after the lapse of seventeen (17) months from the date of such separation, we declared the same to be barred by laches.

On the other hand, we do not agree with the public respondent's theory that since the petitioner did not appeal from the decision of the Labor Arbiter, it is bound by the said Arbiter's conclusion that the infractions committed by the private respondent were not too serious to merit the penalty of dismissal. The Labor Arbiter did not evaluate the evidence for the parties or make findings of fact. His three (3) page decision merely refers to the suspension letter of 5 November 1985 and its contents, the private respondent's subsequent letter of explanation, the petitioner's 23 November 1985 letter of dismissal and the respective conclusions of the parties with respect to the legality or illegality of the dismissal.

With respect, however, to the public respondent's findings of fact and conclusion that the private respondent's dismissal was illegal, we find the same to be correct. No sufficient evidence was presented to support the grounds relied upon for the private respondent's dismissal. The petitioner's evidence simply shows minor infractions committed without malice, dishonest motive or bad faith. On the other hand, the private respondent's explanation, submitted immediately within the 24-hour period unilaterally given by the petitioner in its 5 November 1985 order of preventive suspension, is convincing enough to absolve her of any ascribed malice, dishonest motive or bad faith and show that no material damage was inflicted upon the petitioner. As quoted in the assailed decision, her explanation reads:

"x x x 1) Regarding the cash shortage amounting to P131.00 I have an error in writing the amount in my cash transfer. I just noticed it when I'm (sic) preparing my October 6, statistical report, so I included it on (sic) my Saturday and Sunday cash collection and deposited in the following day I have already deposited the money

before the auditor conducted an audit last October 7/85. But before the auditor cash count (sic) the money I totalled my collection first because I have an (sic) extra coins on (sic) my collections so (sic) happened that I did not notice that the morning shift counter clerk already tear (sic) the yellow receipts which I have not included in my total. After the audit, the auditor told me that I have a shortage of P43.00 I told him that I will just cover the shortage. So before the auditor leaves (sic) the office I have (sic) already covered said shortage.

2. Those 13 telegrams was (sic) filed October 24 and dated October 25, because that was received after the last pick-up of the pick-up courier, but we have an agreement with the customers that their telegram will be pick (sic) up tomorrow (Oct. 25) lunch time and may be delivered next day because I intend to send the telegram when I arrived the following day because the reliever might be confused of (sic) the telegram that I will leave knowing that she's only new.

3. Regarding the eleven telegrams left, I have totalled my collection earlier as 6:30 p.m., so that when the pick-up courier arrives at 7:00 p.m., I will just give him the telegrams including my score, because I have many works (sic) to do, being the acting incharge (sic) of that sub-counter, the relievers assigned in our sub-counter do not file their telegrams, starting the first date of the month. I also arranged some other files like duplicate (sic) of DRMH, statistical reports, service and the bank slip deposit. With regards (sic) to the cash collections of those telegrams, I just kept it intact, because I cannot just leave it on the drawer because the steel cabinet was transferred to the main office for repair and besides the Farmers sub-counter is very easy to open.  
x x x"[18]

In view of the private respondent's continuous service of ten (10) years with the petitioner, the penalty of dismissal for the minor infractions would be unduly harsh and grossly disproportionate. While the authority of employers to discipline their employees is recognized and protected by law, it by no means follows that there exist no restrictions to guide its exercise, for both the Constitution[19] and the law[20] guarantee employees security of tenure. Thus, employees may be dismissed only in the manner provided by law; moreover, such a penalty must be commensurate with the act, conduct or omission imputed to the employee and imposed in connection with the employer's disciplinary authority.

Finally, the requirements of due process in dismissal cases were not faithfully observed by the petitioner. While it is true that it served upon the private respondent the written charge against her via the 5 November 1985 order of preventive suspension, no hearing was conducted after she had submitted her explanation. She was peremptorily dismissed effective 21 November 1985 pursuant to the petitioner's 23 November 1985 letter of dismissal. The relevant portions of Article 278[21] of the Labor Code, as amended by Sections 13 and 14 of B.P. Blg. 130, read:

"ART. 278. Miscellaneous Provisions.

x x x

(b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just or authorized cause and without prejudice to the requirement of notice under Article 284 of this Code, the clearance to terminate employment shall no longer be necessary.

However, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Ministry of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer. The Ministry may suspend the effects of the termination pending resolution of the case in the event of a prima facie finding by the Ministry that the termination may cause a serious labor dispute or is in implementation of a mass lay-off."

From the above provision and Rule XIV, Book V of the Rules Implementing the Labor Code, it may be observed that it is not enough that the employee be served with two (2) written notices, viz.: (a) the notice stating the particular acts or omission constituting the grounds for his dismissal and (b) the notice of the decision to dismiss him, stating clearly the reasons therefor.[22] The employee must also be afforded the opportunity to be heard and defend himself with the assistance of his representative, if he so desires. Section 5 of the aforesaid Rule XIV reads:

"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."

In the instant case, aside from the fact that no hearing was conducted, the private respondent was deprived of a reasonable time within which to answer the charge for, as earlier adverted to, she was given only twenty-four (24) hours to submit her explanation. In the light of the nature of the preferred charges -- which would have certainly required repeated reference to documents probably already in the petitioner's possession -- and the fact that the assistance of a lawyer appeared indispensable for the full protection of the private respondent's right in view of the possible loss of her only source of livelihood, it is difficult to believe that the petitioner itself did not perceive the 24-hour deadline to be unjust, unreasonable and oppressive. It would seem that its swift action was a clear manifestation of its unequivocal decision to dismiss her and the explanation it required of her a mere cover-up to clothe the entire episode with a semblance of due process. This is highly condemnable for it mocks the statutory requirements and administrative guidelines to ensure due process.

We have held in a number of cases that the aforesaid requirements of due process are mandatory[23] and constitute conditions sine qua non for the valid dismissal of employees.[24]

It is thus clear that the public respondent committed no grave abuse of discretion in reversing the decision of the Labor Arbiter.

ACCORDINGLY, for lack of merit, the instant petition is DISMISSED with costs against the petitioner.

**SO ORDERED.**

Feliciano, (Chairman), Bidin, Romero, and Melo, JJ., concur.

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[1] Second Division. Annex "A" of Petition; Rollo, 16-34.

[2] Id., 27.

[3] Rollo, 34.

[4] Id., 5, 45.

[5] Rollo, 46-47.

[6] Id., 48.

[7] Id., 87.

[8] Id., 26.

[9] Rollo, 79.

[10] Rollo, 31.

[11] Id., 31-32.

**[12] 20 SCRA 134 [1967].**

[13] Tijam vs. Sibonghanoy, 23 SCRA 29, 35 [1968].

[14] San Miguel Corporation vs. Cruz, 31 SCRA 819, 823 [1970].

[15] Go Chi Gun vs. Go Cho, 96 Phil. 622 [1955]; Mejia de Lucas vs. Gamponia, 100 Phil. 277 [1956]; Vergara vs. Vergara, 5 SCRA 53 [1962]; Maneclang vs. Baun, 208 SCRA 179 [1992].

[16] Supra, footnote no. 12.

[17] Citing Alipio vs. Rodriguez, G.R. No. L-17336, 26 December 1963; Morales vs. Patriarca, G.R. No. L-21280, 30 April 1965.

[18] Rollo, 23-24.

[19] Section 9, Article II, 1973 Constitution; Section 18, Article II and Section 3, Article XIII, 1987 Constitution.

[20] Title I, Book VI, Labor Code, as amended.

[21] This is now Article 277, with amendments introduced by R.A. No. 6715.

[22] Sections 2 and 6, Rule XIV, Book V of the Implementing Rules and Regulations.

[23] National Service Corp. vs. NLRC, 168 SCRA 122 [1988]; Tingson vs. NLRC, 185 SCRA 498 [1990]; Marina Port Services, Inc. vs. NLRC, 193 SCRA 420 [1991]; De Vera vs. NLRC, 200 SCRA 439 [1991]; Salaw vs. NLRC, 202 SCRA 7 [1991].

[24] Ruffy vs. NLRC, 182 SCRA 365 [1990].

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