

PACIFIC TIMBER EXPORT CORPORATION, AND/OR CARLOS B. TERAOKA, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, LABOR ARBITER JOAQUIN A. TANODRA, APOLITO BAUZON, DIOSDADO CAT...

G.R. No. 106170. July 30, 1993

Ponente: CRUZ, J.

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CRUZ, J.:

On June 10, 1990 several employees of Pacific Timber Export (PATECO) lodged a complaint with the Department of Local Government against the non-remittance of their Social Security Service contributions by their employer.[1] Twelve days later, PATECO issued two memorandum-circulars notifying eleven of the complainants of the termination of their services from office and the cancellation of their privileges as PATECO employees.[2]

On November 13, 1990, three of these employees filed a complaint for illegal dismissal with the Department of Labor and asked that they be granted separation pay in lieu of reinstatement. This was granted by Executive Labor Arbiter Antonio C. Pido on December 17, 1990.

On that same date, the remaining complainants brought an action with the Regional Arbiter alleging that as a result of the complaint they filed with the DILG, their services were illegally terminated by the private respondent.[3]

On April 30, 1991, Labor Arbiter Joaquin Tanodra, after considering the position papers and documentary evidence submitted by the parties, rendered a decision ordering the company to pay the dismissed employees their separation benefits and back wages.[4]

PATECO appealed to the NLRC, mainly on the ground of denial of due process. This appeal having been dismissed,[5] PATECO is now before this Court to invoke the same ground.

The petitioners cite Sec. 11, Rule V of the New Rules and Procedures of the NLRC, reading as follows:

- b) In case of two (2) successive non-appearances by the respondent, despite due notice, during the complainant's presentation of evidence, the complainant shall be allowed to present evidence ex parte, subject to cross-examination by the respondent, where proper, at the next hearing. Upon completion of such presentation of evidence for the complainant, another notice of hearing for the reception of the respondent's evidence shall be issued, with a warning that failure of the respondent to appear shall be construed as submission by him of the case for resolution without presenting his evidence.

The petitioners' contention is that after the submission of the position papers by the parties, there was no notice from the respondent Labor Arbiter that the hearings had been terminated. No reason for such action was given. It was only when they were furnished a copy of the decision of April 30, 1991, that they came to know that there was a scheduled hearing on April 10, 1991, presumably for the presentation by the complainants of their evidence.

The petitioners claim that if they had failed to attend the hearing on April 10, 1991, another hearing should have been set for the cross-examination of the complainants. Thereafter, a hearing should also have been set for them to present their evidence, with a warning that their failure to appear would be construed as their submission of the case for resolution.

The petitioners also point out that the notice for the April 10, 1991 hearing was served on the company and not their counsel. This was not notice in law. As early as April 2, 1991, the address of their counsel had been notified to the Labor Arbiter, so there was no reason why the notice was erroneously sent to the company.

On the question of dismissal, the petitioners insist that private respondents Romualdo Magtangob, Carlito Magtangob, Domingo Abuan and Floro Labrique voluntarily resigned so they could devote their time to fishing and trapping lobsters. The other respondents, namely, Felizardo Bauzon, Hipolito Bauzon and Eduardo Bauzon, Diosdado Catabay, and Reynaldo Baradi, were dismissed from their employment on the grounds of insubordination and abandonment.

We hold for the respondents.

The petitioners should not have assumed that after they submitted their position papers, the Labor Arbiter would call for a formal trial or hearing. The holding of a trial is discretionary on the Labor Arbiter; it is not a matter of right of the parties, especially in this case, where the private respondents had already presented their documentary evidence. Furthermore, it is noted that the petitioner's counsel attended only three of the eight scheduled hearings.[6]

The petitioners cannot claim a denial of due process because the Labor Arbiter gave the parties eight opportunities to ventilate their sides and adduce evidence to substantiate their respective claims, in addition to the position papers they submitted.

The non-service on the petitioners' counsel of the notice of the last scheduled hearing is not the fault of the Labor Arbiter. Although the address of their counsel was furnished on April 2, 1991, the records show that as early as March 26, 1991, immediately after the hearing of March 25, 1991, where the petitioners' counsel also did not appear, notice to him was sent by registered mail.[7] Prior to the April 10 hearing, the petitioner never complained that notices were not sent to their counsel but to the company itself. Significantly, despite the alleged error, their counsel was able to attend the conferences on no less than three of the eight occasions.[8] It is too late for them to be complaining now.

On the issue of dismissal, we note that the petitioners failed to adduce evidence to substantiate the private respondents' separation. The burden was upon them as employers to show that the dismissal was for just cause.[9] There was not even a single piece of evidence showing the continued absence or abandonment of the dismissed employees.

The petitioners did ask in their position paper for a hearing to thresh out some factual matters pertinent to their case. However, they had no right or reason to assume that their request would be granted. The petitioners should have attached to their position paper all the documents that would prove their claim in case it was decided that no hearing should be conducted or was necessary. In fact, the rules require that position papers shall be accompanied by all supporting documents, including affidavits of witnesses in lieu of their direct testimony.

The Labor Arbiter cannot be faulted for ruling out the holding of further hearings, considering the attendance record of the petitioners' counsel. Bearing in mind the objective of the rules to assist the parties in obtaining just, expeditious and inexpensive settlement of labor disputes, the Labor Arbiter correctly ruled that further hearings would put a heavy burden on the workers, who would have to come all the way from Aurora, Quezon to Quezon

City.

It was the petitioner's fault that they failed to attend the several scheduled hearings. It would be an injustice to require the private respondents to attend another round of hearings simply because of the petitioners' shortcomings.

We hold that the appeal to the NLRC and the petition now before us have afforded the petitioners more than sufficient opportunity to be heard. Whatever procedural flaws may have marred the proceedings before the Labor Arbiter - although we have found none - have been rectified in the subsequent proceedings.[10]

The Court is not unaware of the practice of some lawyers who, lacking plausible support for their position, simply claim a denial of due process as if it were a universal absolution. The ground will prove unavailing, and not surprisingly since it is virtually only a pro forma argument. Due process is not to be bandied like a slogan. It is not a mere catch-phrase. As the highest hallmark of the free society, its name should not be invoked in vain but only when justice has not been truly served.

WHEREFORE, no grave abuse of discretion having been committed by the NLRC in affirming in toto the Labor Arbiter's decision, the herein petition is DISMISSED with costs against the petitioner.

SO ORDERED.

Grño-Aquino, Davide, Jr., Bellosillo, and Quason, JJ., concur.

[1] Rollo, p. 48.

[2] Annexes D and E, Rollo pp. 56-57.

[3] Annexes F and G, Rollo pp. 58-59.

[4] Rollo, pp. 46-55.

[5] Ibid, pp. 28-39.

[6] Original Records, pp. 5, 8, 12, 14; 27, 28-29.

[7] Ibid., p. 30.

[8] Id., pp. 12- 27-28.

[9] Art. XIII, Sec. 3, 1987 Constitution, Sec. 279 Labor Code, *Manggagawa ng Komunikasyon sa Pilipinas v. NLRC*, 194 SCRA 573; *Reyes and Lim Co. Inc. vs. NLRC*, 201 SCRA 772.

[10] *TM Valderama & Sons v. Drilon*, 181 SCRA 308; *PNOC Energy Development Corp. v. NLRC*, 201 SCRA 487; *Manila Resources Development Corporation v. NLRC*, 213 SCRA 296.

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