ALHAMBRA INDUSTRIES, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND DANILO RUPISAN, RESPONDENTS.

G.R. No. 106771. November 18, 1994

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

TODAY employment is no longer just an ordinary human activity. For most families the main source of their livelihood, employment has now leveled off with property rights which no one may be deprived of without due process of law.

Termination of employment is not anymore a mere cessation or severance of contractual relationship but an economic phenomenon affecting members of the family. This explains why under the broad principles of social justice the dismissal of employees is adequately protected by the laws of the state. Hence, Art. 277, par. (b), of the Labor Code of the Philippines, as amended by Sec. 33, R.A. 6715, provides –

> Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, 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 ample opportunity to be heard and to defend 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 Department 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 Secretary of Labor and Employment may suspend the effects of the termination pending resolution of the dispute in the event of a prima facie finding by the appropriate official of the Department of Labor and Employment before whom such dispute is pending that the termination may cause a serious labor dispute or is in implementation of a mass lay-off.

Rule XIV, Book V, of the Omnibus Rules Implementing the Labor Code outlines the procedure for termination of employment –

> Sec. 1. Security of tenure and due process. – No worker shall be dismissed except for a just or authorized cause provided by law and after due process.
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> Sec. 2. Notice of Dismissal. – Any employer who seeks to dismiss a worker shall furnish him a written notice stating the particular acts or omissions constituting the grounds for his dismissal. In cases of abandonment of work, the notice shall be served at the worker's last known address.
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> x x x x
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> 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 representatives, if he so desires.

> Sec. 6. Decision to dismiss. – The employer shall immediately notify a worker in writing of a decision to dismiss him stating clearly the reasons therefor.
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> Sec. 7. Right to contest dismissal. – 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 Commission.
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> x x x x
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> Sec. 11. Report on dismissal. – The employer shall submit a monthly report to the Regional Office having jurisdiction over the place of work all dismissals effected by him during the month, specifying therein the names of the dismissed workers, the reasons for their dismissal, the dates of commencement and termination of employment, the positions last held by them and such other information as may be required by the Ministry (Department) for policy guidance and statistical purposes.

We declared in Salaw v. NLRC[1] –

> Under the Labor Code, as amended, the requirements for the lawful dismissal of an employee by his employer are two-fold: the substantive and the procedural. Not only must the dismissal be for a valid or authorized cause as provided by law (Articles 279, 281, 282-284, New Labor Code), but the rudimentary requirements of due process - notice and hearing - must also be observed before an employee may be dismissed. One does not suffice; without their concurrence, the termination would, in the eyes of the law, be illegal (San Miguel Corporation v. NLRC, G.R. No. 78277, May 12, 1989, 173 SCRA 314).
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> The inviolability of notice and hearing for a valid dismissal of an employee can not be overemphasized. Those twin requirements constitute essential elements of due process in cases of employee dismissal. The requirement of notice is intended to inform the employee concerned of the employer's intent to dismiss him and the reason for the proposed dismissal; on the other hand, the requirement of hearing affords the employee the opportunity to answer his employer's charges against him and accordingly to defend himself therefrom before dismissal is effected. Neither one of these two requirements can be dispensed with without running afoul of the due process requirement of the Constitution (Century Textile Mills, et al. v. NLRC, et al., No. 77859, May 25, 1988, 161 SCRA 528).

On 27 June 1987, petitioner Alhambra Industries, Inc. (ALHAMBRA for brevity), a Filipino cigar and cigarette manufacturing and distribution company, employed private respondent Danilo C. Rupisan as salesman on a six-month probationary basis. From 9-12 December 1989, ALHAMBRA conducted a surprise audit of the records of Rupisan. He was then called to the Head Office on 3 January 1990 where alleged violations of company rules purportedly committed by him were brought to his attention. On 8 January 1990, Rupisan was placed under a one-month preventive suspension for serious violations of company policies, rules and regulations, as reflected in the results of the surprise audit.

On 22 January 1990, Rupisan protested his suspension, reiterating vehement denial of the charges against him and exposing the threat of termination at their meeting of 3 January 1990. He alleges that as of 30 December 1989 the charges against him had become academic when he was given a clearance of all his accountabilities.

On 6 February 1990, a day before the end of his suspension, ALHAMBRA wrote Rupisan terminating his services effective 8 February 1990.

On 23 March 1990, Rupisan sued ALHAMBRA for illegal dismissal and unpaid wages or commissions. The suit was later amended on 24 April 1990 to include charges of illegal suspension and damages.

After trial, Labor Arbiter Donato G. Quinto, Jr., found that the termination of Rupisan was for a just cause.[2] However, he also ruled that there was a violation of Rupisan's right to due process, particularly the failure of

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ALHAMBRA to furnish him copy of the audit report on which his dismissal was based. Consequently, judgment was rendered directing ALHAMBRA to pay Rupisan P23,040.00 in backwages covering the period 8 February to 19 November 1990, P600.00 in unpaid salary from 1-7 January 1990, P2,650.00 for separation pay in lieu of reinstatement, and commissions for the sales generated in the months of November and December 1989.

Both parties appealed to respondent National Labor Relations Commission which on 29 May 1992 affirmed the Labor Arbiter's findings of lack of due process but added that since Rupisan could have explained fully the charges against him had he been given the chance to do so, his reinstatement was instead ordered in lieu of separation pay.

In this extraordinary recourse under Rule 65 of the Rules of Court, ALHAMBRA seeks a declaration that Rupisan was validly dismissed and, in any case, he should no longer be reinstated but paid separation pay instead. In his comment, Rupisan also seeks payment of separation pay and no longer reinstatement.

The crux of the controversy is whether respondent NLRC committed grave abuse of discretion in sustaining the finding of the Labor Arbiter that Rupisan was illegally dismissed but directing at the same time his reinstatement for the reason that he could have explained the charges had he been given the opportunity to be heard. NLRC however appears to have skirted the issue on the existence of a just cause for dismissal and disposed of the case only on the basis of absence of due process.

The error is consequential. A termination without just cause entitles a worker to reinstatement regardless of whether he was accorded due process. On the other hand, termination of a worker for cause, even without procedural due process, does not warrant reinstatement, but the employer incurs liability for damages.

Since the Labor Arbiter found a valid ground for dismissal, taking into consideration the controverting evidence of the parties, which finding was not set aside by NLRC, the latter was in grave error when it directed reinstatement. Where, on the basis of the evidence of the opposing parties the validity of the dismissal is determinable at the level of the Labor Arbiter, the latter should resolve that issue. And if the Labor Arbiter finds just cause in the termination, reinstatement would no longer serve any purpose. After all, a finding by the Labor Arbiter as to the validity of the ground for dismissal is much more impartial and trustworthy than a determination by the employer who assumes the role of accuser and judge at the same time.

To order reinstatement and compel the parties to start the procedure from step one would be circuitous because almost invariably that same issue of validity of the ground of dismissal would be brought back to the Labor Arbiter for adjudication. To avoid this runabout process, we laid down in Wenphil Corporation v. NLRC[3] that an otherwise justly grounded termination without procedural due process would only sanction payment of damages –

> The failure of petitioner to give private respondent the benefit of a hearing before he was dismissed constitutes an infringement of his constitutional right to due process of law and equal protection of the laws (BLTB Bus Co. v. Court of Appeals, 71 SCRA 470). The standards of due process in judicial as well as administrative proceedings have long been established. In its bare minimum due process of law simply means giving notice and opportunity to be heard before judgment is rendered (Lopez v. Director of Lands, 47 Phil. 23) x x x x
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> However, it is a matter of fact that when the private respondent filed a complaint against petitioner he was afforded the right to an investigation by the labor arbiter. He presented his position paper as did the petitioner x x x x The labor arbiter concluded that the dismissal of private respondent was for just cause x x x x The Court is bound by this finding of the labor arbiter x x x x
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> By the same token, the conclusion of the public respondent NLRC on appeal that private respondent was not afforded due process before he was dismissed is binding on this Court. Indeed, it is well taken and supported

> by the records. However, it cannot justify a ruling that private respondent should be reinstated with backwages as the public respondent NLRC so decreed. Although belatedly, private respondent was afforded due process before the labor arbiter wherein the just cause of his dismissal had been established. With such finding, it would be arbitrary and unfair to order his reinstatement with backwages.
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> The Court holds that the policy of ordering the reinstatement to the service of an employee without loss of seniority and the payment of his wages during the period of his separation until his actual reinstatement x x x when it appears he was not afforded due process, although his dismissal was found to be for just and authorized cause in an appropriate proceeding in the Ministry of Labor and Employment, should be reexamined. It will be highly prejudicial to the interests of the employer to impose on him the services of an employee who has been shown to be guilty of the charges that warranted his dismissal from employment. Indeed, it will demoralize the rank and file if the undeserving, if not undesirable, remains in the service x x x x
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> However, the petitioner must nevertheless be held to account for failure to extend to private respondent his right to an investigation before causing his dismissal. The rule is explicit as above described. The dismissal of an employee must be for just or authorized cause and after due process (Section 1, Rule XIV, Implementing Regulations of the Labor Code). Petitioner committed an infraction of the second requirement. Thus, it must be imposed a sanction for its failure to give a formal notice and conduct an investigation as required by law before dismissing petitioner from the employment. Considering the circumstances of this case petitioner must indemnify the private respondent the amount of P1,000.00. The measure of this award depends on the facts of each case and the gravity of the omission committed by the employer.

In the case at bench, the decision to dismiss Rupisan did not state the reason for his termination, in disregard of Sec. 6, Rule XIV, Book V, of the Omnibus Rules. But, having been found guilty of serious misconduct,[4] private respondent cannot demand reinstatement nor separation pay. However, he is entitled to damages for petitioner's non-observance of procedural due process which is not only required by statute but enshrined in the Constitution. For this purpose, the amount of P10,000.00 is considered fair, reasonable and realistic.[5]

WHEREFORE, the petition is GRANTED and the assailed decision of NLRC dated 29 May 1992 is SET ASIDE. The decision of Labor Arbiter Donato G. Quinto, Jr., dated 19 November 1990 is REINSTATED except as to the award of separation pay which is deleted. In addition, petitioner is ordered to pay private respondent Danilo Rupisan P10,000.00 for having been denied procedural due process.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Quiason, and Kapunan, JJ., concur.

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[1] G.R. No. 90786, 27 September 1991, 202 SCRA 7, 12.

[2] The Labor Arbiter explained: 'Complainant x x x admitted that (Alhambra) conducted an audit for his accountabilities x x x but what (Rupisan) is insisting is that he was not furnis(ed) a copy of this audit report and denies having committed the irregularities imputed to have been committed by him. But complainant as shown in his position paper, had admitted to have committed most of the charges leveled against him but tried to justify the same x x x x' As found by the arbiter, the charge of '(i)ncurring a cash shortage in the amount of P7,416.88' was admitted by Rupisan explaining that 'he had reimbursable expenses' due from Alhambra. Further, the shortage is evident from Rupisan's Accountability Report for the month of November and December 1989 he himself presented.

As to the charge that he '(k)ept company-owned stocks worth P9,856.93 in his residence which were not reflected in the report of his stock accountabilities.' Rupisan alleged that the arrangement of allowing a salesman 'to keep

some stocks at their residence without yet including the same in their report of stock accountability x x x is a common and tolerated practice' since 'it is oftentimes difficult to withdraw stock from (Alhambra's) field bodega.'

On the charge that '(h)e lost the original copies for collection of Invoices Nos. 7986 and 7990 in the total amount of P6,844.65,' Rupisan retorted, 'who is the person who has never lost a thing?'

The charge that '(h)e over-reported in his account charge sales Invoices Nos. 85256 and 44488' was never disputed by Rupisan.

As regards the charges that '(h)e extended credit to V. Chan store for P22,542.00 per Invoice No. 7991 despite his knowledge that it still had an uncleared bounced check with him in the amount of P15,000.00 and x x x to several stores for more than 30 days although he is aware that this is strictly prohibited under the company policy,' Rupisan claimed that these 'have long been the practice in the company and such were tolerated to (sic) by the management.'

The Labor Arbiter then concluded that the charges find basis for termination under Art. 282 of the Labor Code, specifically, the first charge is 'fraud,' the second and third, are considered 'neglect;' the fourth is 'serious misconduct;' and, the last two fall under 'willful disobedience.'

[3] G.R. No. 80587, 8 February 1989, 170 SCRA 69, 74-76.

[4] See Note 2.

[5] See Reta v. NLRC, 27 May 1994.

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