

**AQUINAS SCHOOL, PETITIONER, VS. HON. BIENVENIDO S. MAGNAYE,
LABOR ARBITER, DEPARTMENT OF LABOR AND EMPLOYMENT
(NCR) AND MARITES M. UMALI, RESPONDENTS.**

G.R. No. 110062. September 05, 1997

Ponente: ROMERO, J.

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ROMERO, J.:

Herein case provides us another opportunity to stress the prevailing doctrine that a penalty of P1,000.00 is imposed upon an employer for dismissing an employee for just cause but failing to observe the requisite due process.

Private respondent Marites M. Umali was a regular classroom teacher in Aquinas School. On September 30, 1991 she filed an application for sick leave until October 8, 1991 allegedly upon the advice of her doctor, Dra. Zenaida Javier-Uy as contained in the attached medical certificate.

On October 9, 1991 private respondent supposedly reported for work. However, she only punched in her daily time card and immediately left the school premises without the knowledge and consent of the school authorities in violation of school regulations. This prompted petitioner to issue a memorandum dated October 10, 1991 asking private respondent to explain her conduct.

On October 14, 1991 when private respondent received the October 10, 1991 memorandum, petitioner likewise received a letter from her requesting that her sick leave application be extended until October 25, 1991, allegedly on the advice of the same doctor. Private respondent again asked for another extension of her sick leave for the period October 26 - November 15, 1991.

In a letter dated November 5, 1991 and received by private respondent on November 11, 1991, petitioner informed the former that her application for sick leave was being held in abeyance pending her medical examination by an accredited physician. Private respondent neither replied to the letter nor showed up on the date scheduled for her medical examination.

Accordingly, petitioner required private respondent to explain her failure to reply and comply with its instructions. In answer, private respondent averred that she was already "under the care of a cardiologist and a psychiatrist," as shown in the medical certificate issued by Dr. Luz Burgos of the National Center for Mental Health. Unsatisfied with private respondent's explanation, petitioner reiterated its request for the former to submit herself to a medical examination to be conducted by its own physician. She was also required to explain why she left the school premises on October 9, 1991.

Disdaining to furnish an explanation for her behavior, she stubbornly refused to undergo a medical examination. Consequently, in a letter dated November 19, 1991, petitioner denied her applications for sick leave and terminated her services on the grounds of willful disobedience of the former's lawful orders and abandonment due to prolonged absence without official leave.

In a complaint for illegal termination filed by private respondent and submitted for arbitration as agreed upon by the parties before the National Conciliation and Mediation Board on December 5, 1991, the following issues were brought up for resolution: (1) whether the acts of private respondent constitute willful disobedience of the lawful orders of the school authorities; (2) whether private respondent's absences amount to abandonment, hence equivalent to gross and habitual neglect of her duties; and (3) whether private respondent was accorded due process.

The Labor Arbiter found private respondent guilty of willful disobedience, as defined in Article 282 of the Labor Code, but decreed that she did not commit any act of abandonment that would justify her dismissal. Although ruling that private respondent was not accorded due process, still, he found the penalty of dismissal highly disproportionate to the misconduct committed. He, therefore, gave petitioner the option to reinstate private respondent without loss of seniority or, if no longer feasible due to strained relations, to pay private respondent separation pay equivalent to one (1) month's pay for every year of service, with no backwages.

Both parties filed their respective motions for reconsideration which the Labor Arbiter denied declaring:

WHEREFORE, premises considered, the Motions for Reconsideration filed by both parties are hereby denied for lack of merit. Respondent Aquinas School is ordered to pay Complainant Marites M. Umali separation pay equivalent to one (1) month's pay for every year of service for seven (7) years or P33,446 (7 yrs. x P4,778) plus monthly salary at reinstatement month (April 1992) equivalent to P4,778 or a total separation pay of P38,224."

Petitioner comes before this Court alleging that the Labor Arbiter committed grave abuse of discretion:

1. in concluding that private respondent did not abandon her work at petitioner-school despite the explicit finding and conclusion that all her leave applications for more than a month's absence from the job were properly disapproved by the petitioner-school and that under existing company rules and regulations, her unauthorized absence of more than 7 consecutive days is considered "abandonment" of the work by the employee;
2. in ordering the reinstatement (or, at the option of petitioner, the payment of separation pay) of private respondent to the service despite a clear finding of gross insubordination and serious misconduct committed by Umali against petitioner and despite a clear case of abandonment of work against private respondent;
3. assuming the negative of the issue raised in the preceding paragraph, in modifying the computation of the separation pay of private respondent in its resolution dated February 17, 1993, adding without basis or explanation the amount of P4,778.00 to the original award of P33,446 (7 years of service x P4,778);
4. in concluding that petitioner failed to observe due process of law in dismissing private respondent from the service; and
5. assuming the negative of the issue raised in the preceding paragraph, in ignoring prevailing jurisprudence on arbitrary dismissals for cause, ordering the payment of separation pay to private respondent (or her reinstatement to the service) instead of the "indemnity" uniformly fixed by this Honorable Court at P1,000.00.

In addition, petitioner submits that private respondent should have been found guilty of abandonment based on petitioner-school's Rule on Absences which reads:

- b) Unauthorized and unexcused absences will be considered simple case of absence if only up to 3 working days duration, excessive absence if from 4 to 6 consecutive working days duration, and abandonment of work if in excess of 7 consecutive days, regardless of sick leave credits or benefit."

As this Court held in *Brew Master International Inc. v. NLRC*,^[1] abandonment as a just and valid ground for dismissal, requires the deliberate and unjustified refusal of the employee to resume his employment. Two

elements must be present, namely: (1) the failure to report for work or absence without valid or justifiable reason, and (2) a clear intention to sever the employer-employee relationship. The second element is more determinative of the intent and must be evinced by overt acts. Mere absence, not being sufficient, the burden of proof rests upon the employer to show that the employee clearly and deliberately intended to discontinue his employment without any intention of returning.

Petitioner failed to discharge this burden. This Court quotes with approval the disquisition of the Labor Arbiter in his decision[2] which reads:

In the case at bar, Complainant notified the school of her intended absence. Her sick leave applications were also properly supported by medical certificates as required by the school. When the school started doubting the truthfulness of Complainant's claim of sickness, the only actions the school took were to hold approval of the sick leave applications and order Complainant to submit to medical examination to verify her claimed sickness. Respondent school did not disauthorize the requested sick leave at the time of application and did not order Complainant to report back to work lest she be considered as having abandoned her post. Meanwhile, complainant continued to be absent believing in good faith that she was on sick leave and that her applications were in order. When Respondent finally informed Complainant much later (i.e. November 19, 1991) that her sick leaves were disapproved thereby making her past absences unauthorized, Complainant cannot be said to have abandoned her work on account of her continuous unexcused absences, there being no showing that the respondent had ordered Complainant to return to work and that Complainant has refused without reason and justification to do so. The filing of a sick leave application and the applications for extension by herein complainant clearly negate any intention to discontinue or abandon her work.

Neither can there be abandonment to speak of even by following strictly the definition set forth under the Aquinas School Manual x x x.

The sick leave applications of Complainant, and their extensions, were made in conformity with school regulations and, as clarified during the hearing, consistent with existing practice in the school where medical certificates are normally - unless impugned - given due course.

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While the School Manual declares that unauthorized absences in excess of seven (7) consecutive days constitutes abandonment, it surely must cover situations where the absences were without notice at all and the school is fully and completely unaware of the reasons and whereabouts of the employee during the period of absence. Interpreted otherwise, the Rule would be a potent instrument for abuse and harassment. All that would be needed to terminate employees for abandonment is for school authorities to withhold approval on leaves and unauthorize them later. We do not believe this to be the intent of the Rule in question.

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It is true that the school advised Complainant that approval of the application for sick leave was being held in abeyance in the letter of November 5, 1991. This would have constituted notice to the employee that the 'rules of the game were being changed' insofar as the medical certificates submitted by the employee were concerned. But as pointed out, this letter and its contents did not become known to Complainant until November 11, 1991, the date the letter was received at Complainant's address. The contents of that letter can only be given prospective effects. It is reasonable to conclude therefore that Complainant was put on notice that her absences were being questioned only on November 11, 1991. Only absences thereafter, and not before, should therefore be the unauthorized absences that can be counted or considered for purposes of abandonment under the School Manual. To retroact the application of the rules on abandonment to the time that Complainant was on sick leave is, to say the least, contrary to good order and good sense and the rules of fair play, and would be oppressive.

Absences of Complainant that could be considered unauthorized for purposes of applying the rule on abandonment under the School Manual, if at all, can only be counted from November 12, 1991, following the receipt of the November 5, 1991 letter. Even so, there can still be no valid case of abandonment to speak of since she was terminated November 19, 1991, no more than seven consecutive working days (including Saturday, November 16, 1991) later, thus falling short of one day at the very least to consider Complainant's absences as amounting to abandonment under the School rules."

Private respondent's applications for sick leave are indicative of her intention to resume work after the lapse of the period of her leave of absence. Her filing of the instant case for illegal termination is another indicium of her lack of intention to abandon her work. Thus, it would be the height of unfairness and injustice to declare private respondent to have abandoned her job on the mere pretext of non-approval of her sick leave application.

In *Brew Master*, this Court held that while the employer is not precluded from prescribing rules and regulations governing employees' conduct, these rules and regulations must be fair, just and reasonable. It must be underscored that no less than our Constitution looks with compassion on the workingman and protects his rights, not only under a general statement of a state policy,[3] but under the Article on Social Justice and Human Rights,[4] thus placing labor contracts on a higher plane than other agreements, and with greater safeguards. Relations between labor and capital are not merely contractual but impressed with public interest. Perforce, contracts must yield to the common good.

As to petitioner's submission that the Labor Arbiter abused his discretion in ruling that private respondent's termination was carried out without observing due process despite a finding that private respondent committed gross insubordination and serious misconduct justifying her dismissal, suffice it to say that in such a case, the burden rests on the employer to show that the dismissal is for a just cause. Otherwise, the dismissal is deemed unjustified x x x.[5] In *Jones v. NLRC*,[6] the requisites to constitute a valid dismissal are: (a) the dismissal must be for any of the causes provided in Art. 282 of the Labor Code,[7] and (b) only after the employee has been notified in writing and given the opportunity to be heard and defend himself, as required under Secs. 2 and 5, Rule XIV, Book V of the Implementing Rules.[8]

The Labor Arbiter correctly concluded that:

Complainant had willfully and intentionally refused to comply with the two principal orders of the school. The non-compliance by complainant to the first order dated October 10, 1991 which she received on October 14, 1991, though not excusable, may be rationalized as resulting from her emotional stress at that time - - as explained by her during the hearing on March 18, 1991. This may well be the 'first offense' referred to by Complainant in her pleadings. But then, Complainant was given a second order on the same matter on November 16, 1991. Again, Complainant did not comply. This second non-compliance, when she was given the last opportunity to do so, considering the utter lack of reason or justification for such non-compliance, can only result from an intentional refusal or willful disobedience, especially so when it is considered that Complainant had been certified as no longer under stress and already fit to work. This second non-compliance has never been justified which clearly indicates an intention to completely ignore the lawful orders of her superior.

The same can be said about her adamant refusal to submit to medical examination by the school-designated physician. Complainant was given the first order on November 6, 1991 to see the physician on November 7 or 12, at Complainant's option. She does not deny having received this order. Complainant did not reply to the order; neither did she see the physician as required x x x.

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The acts of Complainant, in repeatedly refusing to comply with the lawful and reasonable orders of the School,

cannot be considered simply as acts of simple disobedience. Considering the circumstances and the sequence of refusals, they cannot but be willful and intentional. A willful refusal to comply with the superior's lawful and reasonable orders is a serious misconduct that strikes at the very root of supervisory authority, which should not be tolerated if organizations are to maintain order and discipline, both essential to organizational stability and survival. This dictum finds support in a long line of cases decided by our Supreme Court.”[9]

The above findings clearly established that private respondent committed serious misconduct or willful disobedience of petitioner's lawful orders which is one of the causes for termination under Article 282 of the Labor Code.

However, petitioner dismally failed to accord due process to private respondent. essentially, due process in administrative proceedings connotes the giving of opportunity to explain one's side or an opportunity to seek reconsideration of the action or ruling complained of. The employer must furnish the employee a written notice containing a statement of the cause for termination and to afford said employee ample opportunity to be heard and defend himself with the assistance of his representative, if he so desires. The worker must be notified in writing of the decision dismissing him, stating clearly the reasons therefor.[10]

The following observation of the Labor Arbiter is in point:

After the series of memoranda sent to Complainant by respondent school which remained unanswered, save for the November 12, 1991 memo, Respondent wrote complainant on November 16, 1991 giving her a last chance to comply with the previous orders of the school. Less than three (3) days later or on November 19, 1991, without giving notice to the employee that she was being charged with abandonment and serious misconduct or willful disobedience and without requiring her to explain why she should not be dismissed, the school terminated her on the grounds of willful disobedience of the lawful orders of the school and for prolonged absences amounting to gross and habitual neglect of her duties.

We agree with Complainant that the letter of November 16, 1991 cannot be considered as the requisite notice to dismiss. Said letter merely contained a recital of memoranda which complainant failed to answer and the order requiring her again to present herself for medical examination which Complainant refused to obey. The letter further advised that her sick leave applications of October 11 and November 4 would be held in abeyance pending compliance with the school's orders. There is nothing in the contents of said November 16, 1991 letter that would indicate that non-compliance therewith would result to (sic) complainant's dismissal or subject her to some other disciplinary action. There was neither the opportunity for her to present her defenses to the charges made. All complainant knew was that approval of her sick leave applications was being held in abeyance. Three days later, she was fired.

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Respondent school acted with undue haste in dismissing Complainant without according her due process. A notice to dismiss setting forth the alleged grounds for abandonment and willful disobedience of the lawful orders of the school authorities was obviously wanting. Neither was Complainant given the opportunity to explain her side on the charges made.”

In *ABS-CBN Employees Union v. NLRC*, [11] this Court ruled that where there exists a valid ground to dismiss an employee but there was non-observance of due process, only a sanction must be imposed upon the employer for failure to give formal notice and to conduct an investigation before dismissing the employee. In such a case, a penalty of P1,000.00 is imposed. Citing *MGG Marine Services, Inc. v. NLRC*, [12] this Court held that failure to prove the observance of due process taints the dismissal. This does not mean however that private respondent would be entitled to back wages or reinstatement or even separation pay. Under prevailing jurisprudence, one is entitled only to indemnity or damages, the amount of which depends on the peculiar circumstances of each case.

WHEREFORE, the decision dated April 6, 1992 and the resolution dated February 10, 1993 of the Labor Arbiter are hereby MODIFIED. The bond is hereby cancelled. Petitioner is ordered to pay private respondent the amount of P1,000.00 as penalty for the latter's non-observance of due process in the termination of the former's services. No pronouncement as to costs.

SO ORDERED.

Regalado, (Chairman), Puno, Mendoza, and Torres, Jr., JJ., concur.

* In Philippine context, the "judge" in compulsory arbitration is called labor arbiter. (C.A. Azucena, *The Labor Code with Comments and Cases*, Vol. II. Revised Edition [1993], p. 277).

[1] G.R. No. 119243, April 17, 1997.

[2] Rollo, pp. 43-49.

[3] Art. II, Sec. 18. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.

[4] Art. XIII, Sec. 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

[5] *Mabeza v. NLRC*, G.R. No. 118506, April 18, 1997.

[6] 250 SCRA 668 (1995).

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

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

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

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing.

[8] SEC. 2. Notice of dismissal. Any employer who seeks to dismiss a worker shall furnish him a written notice stating the particular acts or omission constituting the grounds for his dismissal. In cases of abandonment of work, the notice shall be served at the worker's last known address.

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.

[9] Rollo, pp. 39-42.

[10] See note 5.

[11] G.R. No. 111211, July 24, 1997.

[12] 259 SCRA 664 (1996).

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