

GONZALO D. LABUDAHON KAPATIRANG ANAK-PAWIS SA PIONEER TEXTURIZING, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, PIONEER TEXTURIZING CORPORATION, AND MR. JULIANO LIM, RE...

G.R. No. 112206. December 11, 1995

Ponente: PADILLLA, J.

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PADILLLA, J.:

Petitioner Gonzalo D. Labudahon comes to this Court to seek a reversal of the NLRC decision affirming his dismissal from employment.

Petitioner Labudahon started working in private respondent Pioneer Texturizing Corporation in 1970 as supplier in its winding section. At the time of the termination of his employment, petitioner worked as a tube cleaner in respondent company's Texturizing Department. From 1985 to 1989, petitioner served as president of Kapatirang Anak-Pawis sa Pioneer Texturizing. Thereafter, he served as the union's Vice-President.

On 27 April 1990, petitioner applied for a 13-day paternity leave, but respondent company allowed him only five (5) days of leave effective on 30 April 1990 and until 5 May 1990 because of lack of manpower at the Texturizing Preparatory Section. From 7 May 1990 to 12 May 1990, petitioner absented himself from work without respondent company's approval.

On 11 May 1990, Venus Dy, the personnel manager of respondent company, wrote petitioner a letter directing him to report to work lest his absences be considered as abandonment of duty.

On 12 May 1990, petitioner asked for two (2) weeks of vacation leave from 7 May to 20 May 1990, but the same was disapproved except for two (2) days of leave on 14 and 15 of May 1990 to enable petitioner to attend to family problems. Petitioner did not report for work from 16 to 19 of May 1990. Upon orders of respondent company, petitioner submitted a written explanation citing his wife's childbirth and family problems as reasons for his absences. Petitioner was meted five (5) days suspension for unexcused absences and for insubordination.

In spite of his previous absences, petitioner, as union officer, asked for fifty-four (54) days of leave from 9 July 1990 to 31 August 1990 to prepare for CBA negotiations and union activities. The request was denied and instead the management advised petitioner to file his leave on a weekly basis, as approval thereof was contingent on the necessity of his presence in the operations of the Texturizing Department of respondent company. Petitioner completely ignored this directive and absented himself from work starting 21 July 1990 until 16 August 1990. In a memorandum of the personnel department dated 3 August 1990, petitioner was asked to submit a written explanation for his absences. Respondent company never received any letter of explanation. In a memorandum dated 28 August 1990, the company, through its personnel manager, terminated petitioner's services to take effect on 29 August 1990 "for excessive absences, insubordination, and violation of existing company rules and regulations."

The petitioner filed a complaint for illegal dismissal before the Labor Arbiter. On 17 September 1991, the Labor Arbiter dismissed the complaint for lack of merit. On 12 August 1993, the NLRC Second Division modified the decision after a finding that although there was a valid cause for dismissal, petitioner was not accorded due process. Thus, respondent NLRC ordered the payment by respondent company of P3,000.00 as indemnity to petitioner.

Petitioner did not file a motion for reconsideration before the NLRC. Instead, on 29 October 1995, he filed the present petition for certiorari under Rule 65, Rules of Court, alleging grave abuse of discretion on the part of respondent NLRC in sustaining the Labor Arbiter's decision dismissing him from employment.

We affirm the NLRC decision.

It must be noted at the outset that petitioner failed to move for a reconsideration of respondent NLRC's decision. The filing of a motion for reconsideration of an NLRC decision is a prerequisite to the filing of a petition for certiorari before this Court. This requirement assumes real significance in cases where a petition for certiorari is conveniently resorted to in order to escape the finality of a decision of the NLRC.

The New Rules of Procedure of the National Labor Relations Commission mandate that a motion for reconsideration of any order, resolution or decision of the Commission must be filed within ten (10) calendar days from receipt of such order, resolution or decision.^[1] If no motion for reconsideration is filed, the NLRC's order, resolution or decision shall become final and executory after ten (10) calendar days from receipt thereof.

This Court ruled upon a similar issue in the case of *Zapata vs. NLRC*,^[2] and recently in the case of *G.A. Yupangco vs. NLRC*.^[3] In the *Zapata* case, we held -

"The implementing rules of respondent NLRC are unequivocal in requiring that a motion for reconsideration of the order, resolution, or decision of the respondent Commission should be seasonably filed as a precondition for pursuing any further or subsequent remedy, otherwise the said order, resolution or decision shall become final and executory after ten calendar days from receipt thereof. Obviously, the rationale therefor is that the law intends to afford the NLRC an opportunity to rectify such errors or mistakes it may have lapsed into before resort to the courts of justice can be had. x x x."

In the case at bar, petitioner's failure to file a motion for reconsideration, for whatever reason, is a fatal procedural defect that warrants the dismissal of his present petition.

Substantively, too, we find no grave abuse of discretion on the part of respondent NLRC in affirming the decision of the Labor Arbiter sustaining the legality of petitioner's termination from employment.

The NLRC found that petitioner had no regard for his work. His applications for a series of leaves of absence attest to his unconcern for his duties in respondent company. On the other hand, respondent company has to protect its interests in order to have an efficient and productive enterprise. It is in this light that the law recognizes what are clearly "management prerogatives", or the right of the employer to hire, fire, transfer, demote or promote employees. Doubtless, what respondent did in this case was a management prerogative. The need for petitioner's presence in the company's Texturizing Department cannot be denied. Therefore, the continuous and unauthorized absences of petitioner adversely affected the operations of respondent company. The petitioner left the company with no other choice but to terminate his employment.

The NLRC decision to indemnify petitioner is also affirmed, as there is no evidence in the records to show that respondent company observed the two-notice requirement and hearing before dismissing petitioner. Applying the Omnibus Rules Implementing the Labor Code^[4] on the requirements of notice and hearing, this Court in the case of *Tiu vs. NLRC*^[5] ruled:

"It is evident from the said provisions that the employer is required to furnish an employee who is to be dismissed two (2) written notices before such termination. The first is the notice to apprise the employee of the particular acts or omissions for which his dismissal is sought. This may be loosely considered as the proper charge. The second is the notice informing the employee of the employer's decision to dismiss him. This decision, however, must come only after the employee is given a reasonable period from receipt of the first notice within which to answer the charge, and ample opportunity to be heard and defend himself with the assistance of his representative, if he so desires."

In the case at bar, petitioner was given only a letter of dismissal without earlier informing him of the charges against him and without giving him the opportunity to defend himself. Non-compliance by private respondent with these requirements is a violation of the petitioner's right to due process.

WHEREFORE, the Court DISMISSES the petition and AFFIRMS the decision of public respondent NLRC in toto, including the amount of indemnity awarded to petitioner for failure of private respondent to fully comply with the requirements of procedural due process before dismissing petitioner from employment.

SO ORDERED.

Davide, Jr., Bellosillo, Kapunan, and Hermosissima, Jr., JJ., concur.

[1] Sec. 14, Rule VII of the New Rules of Procedure of the National Labor Relations Commission.

[2] 175 SCRA 56, 5 July 1989.

[3] Minute Resolution dated 17 February 1992, G.R. No. 102191.

[4] "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.

xxx xxx xxx

"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.

"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.

[5] G.R. No. 83433, 215 SCRA 540, 12 November 1992.

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