

**PAMPANGA SUGAR DEVELOPMENT COMPANY (PASUDECO), INC.,
PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION,
PASUDECO UNION OF PROFESSIONALS, TECHNICAL &
DEPARTMENTAL STAFFS & MANU...**

G.R. No. 112650. May 29, 1997

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for certiorari to set aside the decision of the National Labor Relations Commission (NLRC), dated July 30, 1993, reversing the findings of the Labor Arbiter and holding petitioner Pampanga Sugar Development Company, Inc. (PASUDECO) liable for illegal dismissal and ordering it to pay private respondent Manuel Roxas backwages from October 16, 1990 until his reinstatement, and the resolution, dated September 1, 1993, denying petitioner's motion for reconsideration.

The facts are as follows:

Petitioner PASUDECO is a domestic corporation engaged in milling of sugar and its byproducts. It operates a sugar mill in San Fernando, Pampanga.

Private respondent Manuel Roxas was an employee of PASUDECO from 1967 to 1990, his last job being that of a purchasing officer of the company, at a monthly salary of P10,000.00. On October 16, 1990, Roxas was dismissed for serious misconduct, fraud, willful breach of trust, and abandonment of work. The other respondent is PASUDECO Union of Professionals, Technical and Department Staffs (hereinafter referred to as the UNION) of which Roxas is a member.

As purchasing officer, Roxas' duties were to compare price quotations for supplies as gathered by a canvasser, to choose the best bid, and to initial the purchase order prepared based on his selection to signify his approval. In 1982, however, Antonio de Leon became Assistant General Manager and took over the position of head of the Purchasing Department in Manila. The authority to initial purchase orders was transferred from private respondent to Antonio de Leon. When De Leon became the General Manager in June of 1990, the function of initialing purchase orders was given to Venicio Jalandoni.

In October 1990, PASUDECO discovered alterations and falsification of purchase orders and overpricing of materials and supplies bought by the company from 1986 to September 1990, resulting in total loss of P120,000,000.00 to the company. On October 25, 1990, Roxas and his assistant, Canvasser Norberto Gabriel, were confronted with the anomalies by PASUDECO's counsel, Atty. Rodolfo B. Valdez. They were asked to tender their resignation and waive separation benefits. Roxas denied the charges. He pointed out that he had been relieved of the authority to approve purchase orders in 1982 when Antonio de Leon became Assistant Manager and denied that he authorized the insertions made in the purchase orders. He claimed that he had no control over his assistant.

Roxas did not report for work on October 26, 1990. When he reported on November 5, 1990, he was informed by Ricardo Tiglao, Chief Accountant of the company, that the management ordered his name removed from the payroll effective October 16, 1990.

On November 7, 1990, PASUDECO President Luis Panlilio notified Roxas of the charges against him and required him to show cause in writing, within 72 hours, why he should not be dismissed for abandonment of work, serious misconduct, gross and habitual neglect of duties, and fraud or willful breach of trust and to appear at an investigation on November 14, 1990. The investigation did not proceed because the next day, November 8, 1990, the Union and Roxas filed this case for illegal dismissal and nonpayment of salaries before the regional arbitration branch of the NLRC.

After several conferences and hearings Executive Labor Arbiter Lita Aglibut issued an order on December 26, 1990, referring the case to the grievance machinery, as provided in their collective bargaining agreement, and directing private respondent Manuel Roxas to return to work beginning January 2, 1991.

Private respondent reported for work on January 2, 1991. On the same day, Union President Pacifico A. Santiago sent PASUDECO a letter submitting the names of the Union grievance panel and requesting the company for the names of its representatives in preparation for the grievance meetings.[1]

On January 7, 1991, private respondent Roxas received a notice informing him of the charges against him and of the fact that an investigation would be held. As Roxas refused to acknowledge the notice, because, as he later explained, he thought the investigation was in violation of the Order of the Executive Labor Arbiter, the investigation proceeded in his absence on January 10, 1991.

On February 11, 1991, Roxas was dismissed for fraud, breach of trust and confidence, gross and habitual neglect, and abandonment. The letter to him stated:[2]

Dear Mr. Roxas:

This is to advise you that after due investigation conducted by the investigating Committee on January 10, 1991, of which you were duly notified, and with the approval of the Board of Directors in a special meeting held on January 22, 1991, it was proven that you, in conspiracy, connivance, confederation and/or collusion with Mr. Norberto Gabriel, overpriced and/or allowed the overpricing of the value of materials and supplies purchased by the company covering a period of at least five (5) years, resulting to losses totalling P6,750,322.53 to the resulting damage and prejudice of the company. It was also proven that you altered and/or falsified Purchase Orders by making additional unauthorized entries which increased the liabilities of the company without its consent. These acts were committed by you as Purchasing Officer and constituted serious misconduct, fraud and willful breach of trust on your part. The evidence further showed that you were negligent in the performance of your duties as Purchasing Officer because you did not properly supervise your subordinate, Mr. Norberto Gabriel whom you allowed to commit similar acts of overpricing. The records of the company further showed that you were AWOL from October 26, 1990 to December 31, 1990, constituting abandonment of work.

Pursuant to the applicable provisions of the CBA between the company and the supervisors' union of which you are a member, recognizing the prerogative of the company to exercise the right of dismissal for cause and considering that your guilt was amply proven, we hereby notify you that we are terminating your employment in the company effective February 11, 1991 on the grounds of serious misconduct, gross and habitual neglect of duties, negligence, fraud, willful breach of trust and abandonment of work.

Very truly yours,

GERRY RODRIGUEZ

Acting President

On March 5, 1991, petitioner filed a motion to disqualify the Executive Labor Arbiter Lita Aglibut from hearing the case for which reason the case was reassigned, first to Labor Arbiter Leandro Jose and later to Labor Arbiter Quintin Mendoza. On March 9, 1991, Labor Arbiter Mendoza rendered a decision dismissing the case.[3]

On March 31, 1993, the UNION and Roxas filed a Notice of Appeal and Memorandum. PASUDECO moved to dismiss the appeal on the ground that the memorandum on appeal was not verified as required by the rules of the NLRC and that consequently the filing of the memorandum did not interrupt the running of the period of appeal and the NLRC did not acquire jurisdiction over the case.

Private respondents opposed PASUDECO's motion. However, the Labor Arbiter did not resolve the incident[4] but instead referred the records to the NLRC.

On July 30, 1993, the NLRC rendered a decision, reversing the findings of the Labor Arbiter. The dispositive portion of its decision reads:[5]

WHEREFORE, the appealed Decision is hereby REVERSED and SET ASIDE. Another one is entered ordering the respondent to reinstate complainant to his former position without loss of seniority rights, privilege and benefits plus backwages, as above computed.

SO ORDERED.

Petitioner filed a motion for reconsideration but it was denied on September 2, 1993. Hence this petition.

The petitioner contends:

- (1) That the NLRC acted without jurisdiction in giving due course to private respondents' appeal despite the fact that the Notice of Appeal and Memorandum filed by them was not verified as required by the Rules of Procedure of the NLRC;
- (2) That petitioner was deprived of due process as a result of the failure of the NLRC to resolve petitioner's Manifestation with Motion to Strike Out and to allow petitioner time to answer the memorandum appeal before deciding the case;
- (3) That the decision of the NLRC has no factual and legal basis, because Roxas was dismissed for a just cause.

After considering the petition and the records, the Court finds no grave abuse of discretion committed by the NLRC to justify setting aside its decision.

First. Rule VI, §3(a) of the Rules of Procedure of the NLRC states:

Section 3. Requisites for Perfection of Appeal. - (a) The appeal shall be filed within the reglementary period as provided in Section 1 of this Rule; shall be under oath with proof of payment of the required appeal fee and the posting of a cash or surety bond as provided in Section 5 of this Rule; shall be accompanied by a memorandum of appeal which shall state the grounds relied upon and the arguments in support thereof; the relief prayed for; and a statement of the date when the appellant received the appealed decision, order or award and proof of service on the party of such appeal.

A mere notice of appeal without complying with the other requisites aforesaid shall not stop the running of the period for perfecting an appeal.

The purpose for the requirement that pleadings be verified is to insure good faith and to make certain the material averments contained therein. In this case, the material facts alleged are a matter of record in the court below.

Consequently, a verification as to the truth of said facts is not an absolute necessity and may be waived.[6]

Moreover, we have ruled in a number of cases[7] that the absence of verification is not a jurisdictional, but only formal, defect. Its absence does not affect the validity and efficacy of the pleading, much less the jurisdiction of the court, and may be corrected by requiring an oath. This is in keeping with the principle that rules of procedure are established to secure substantial justice and that technical requirements may be dispensed with in meritorious cases.

In the case at bar, the allegations in private respondents' Notice of Appeal and Memorandum are based on the affidavits, position and supplemental papers duly submitted to the NLRC, some of which are under oath and have been the subject of cross-examination. Even then, private respondents subsequently complied with the NLRC rules by attaching a verification to their Opposition to Motion to Strike Out Notice of Appeal with Motion to Admit.[8]

Second. Petitioner's claim that it was deprived of due process is untenable. As observed by the Solicitor General, the only basis for petitioner's motion to dismiss the appeal is the fact that the appeal memorandum was not verified. However, this is a procedural infirmity which the NLRC correctly did not allow to override the requirements of substantial justice.

Petitioner claims that as a result of the failure of the NLRC to resolve its motion, it was not able to file its answer to the memorandum of private respondents. The NLRC, however, examined the position papers of the parties and their pleadings and the records. Moreover, the filing of a motion for reconsideration by petitioner gave it the opportunity not only to dispute the findings of the NLRC but also to answer the arguments of the private respondents, so that it was as fully heard as it might have been had it filed an answer to the appeal memorandum of private respondents. For this reason the fact that PASUDECO expressly reserved the right to file an answer does not mean that, because it was not able to do so, it was denied due process. The essence of due process is the right to be heard at all, to be able to explain its side, or the opportunity to seek a reconsideration of the action or ruling complained of,[9] which in this case PASUDECO was afforded in ample measure.

Nor is there basis for petitioner's complaint that its motion for reconsideration was summarily denied by the NLRC. The resolution of the NLRC, like its main decision, is a reasoned exposition of the grounds justifying the finding that Roxas had been illegally dismissed. In fact, it was PASUDECO's motion for reconsideration which, according to the NLRC, was "a [mere] rehash of its position paper ... and supplemental paper ... which was thoroughly discussed and duly passed upon by the Commission in its decision." [10]

Third. In line with the constitutional policy of social justice[11] and the State's protection of labor,[12] the Labor Code mandates observance of due process and just cause in the termination of employment of laborers.[13] These requirements constitute safeguards against arbitrary, whimsical and capricious dismissals.[14]

In the case at bar, PASUDECO contends that these requirements were faithfully observed in dismissing private respondent Roxas. It claims that Roxas was dismissed on February 11, 1991, not on October 16, 1990 as the NLRC found, and for just causes. It cites the testimonies of its bookkeepers, Erlinda M. Nery and Arsenia Cabrera, that Roxas' name was in fact in the Payroll Summary[15] prepared on October 30, 1990, as covered by CV No. 16144, for the period October 16 to 31, 1990. PASUDECO argues that even if its Chief Accountant, Roberto Tiglao, had actually removed Roxas' name from the payroll, Tiglao's act cannot bind it, because Tiglao had no authority to do so. For this reason, PASUDECO claims that Roxas was guilty of abandonment of work.

According to PASUDECO, Roxas was given several opportunities to be heard but he did not make use of them. When Roxas was informed on November 7, 1990 of the investigation scheduled on November 14, he instead filed

a complaint for illegal dismissal.

With respect to the finding that it had violated the Executive Labor Arbiter's order when it conducted its own investigation, PASUDECO says that Art. I, Sec. 4 of the CBA authorized it to make such investigation in preparation for the grievance committee meeting. This provision reads:

SEC. 4. The right to hire, lay-off, and discharge worker for just and lawful cause shall rest within management and disposition, but each individual employee or worker through the UNION, shall possess the right of appeal through the grievance procedure hereinafter outlined and subject to the provision of the Labor Code.

PASUDECO claims that it is private respondents who violated the labor arbiter's order by refusing to submit their grievance in writing as required by Art. II, Sec. 1(a) of the CBA.[16] It claims that the UNION did not represent Roxas in the grievance meeting on January 17, 1991, leaving petitioner no choice but to act on the evidence gathered by its own Investigating Committee on January 10, 1991.

These contentions are untenable. The fact that Roxas' name was in the original Payroll Summary is immaterial as Nery and Cabrera testified that this document was cancelled at the instance of Chief Accountant Roberto Tiglao. These witnesses testified that private respondent Roxas' name was removed from the payroll for October 16-31, 1991 and, as a consequence, he was not paid his salary for that period.[17] A comparison of PASUDECO's payroll summaries[18] for the periods of October 1 to 15 and October 16 to 31, 1990 indeed shows that Roxas' item was stricken from the latter period's payroll.

Petitioner disclaims responsibility for the removal of Roxas' name from the payroll but its denial is belied by the signatures of its president, Luis Panlilio, and its treasurer/secretary, Ernesto Escaler, in Cash Voucher No. 16158.[19] This cash voucher was the authority for the disbursement of funds for the payroll covering the same period. In signing this voucher these company officials could not have failed to know of the removal of Roxas from the payroll.

Thus, the question is, if Roxas had not been dismissed, why was he no longer on the payroll for the period of October 16 to 31, 1990, and why was he not paid his salary when the fact was that he rendered service from October 16 to 25, 1990? The only conclusion is that it was because he had been dismissed from employment.

Roxas could not have abandoned his work because he had been dismissed.[20] The fact is that Roxas tried to call the company several times to inform it of the fact that he was indisposed. This is shown by telephone bills.[21] His filing of a complaint for illegal dismissal immediately after his name had been removed from the payroll supports the NLRC's finding that Roxas did not abandon his job. It has been held that the immediate filing of a complaint for illegal dismissal by an employee is inconsistent with abandonment.[22]

Consequently, the contention that Roxas was dismissed only on February 11, 1991, after he had refused to attend an investigation conducted by PASUDECO, cannot be sustained. The notices given to Roxas and the subsequent hearing leading to his dismissal were mere attempts to give his dismissal the semblance of procedural regularity.

Nor is there basis for petitioner's contention that Roxas was guilty of disregarding the grievance machinery of the CBA by failing to furnish PASUDECO a written notice of his complaint and refusing to submit to an investigation. PASUDECO knew very well what Roxas' grievance was. The fact is that he had filed a complaint with the Labor Arbiter. For all intents and purposes, he had served a written notice of his grievance on the company.

Moreover, the minutes of the arbitration proceedings of January 29, 1991, which the parties signed, shows the following:[23]

The representative of respondent [PASUDECO] informed this office that a possible settlement is being worked out and because of this, he would like to request for a resetting of the hearing today.

Without objection on the part of the complainant and with the added manifestation that he will file a supplemental motion for execution should settlement fail, the hearing for today is reset on February 18, 1991.

....

If PASUDECO was still discussing the possibility of settling the grievance with private respondents on January 29, 1991, as the minutes state, how could its board of directors have found Roxas guilty as charged on January 22, 1991?

Petitioner maintains that Roxas is guilty of fraud, breach of trust and confidence, gross misconduct, and gross and habitual neglect committed by (1) overpricing and/or allowing the overpricing of materials and supplies purchased by PASUDECO and altering and falsifying purchase orders by making unauthorized entries and by (2) failing to supervise his assistant, Norberto Gabriel, and being absent without official leave (AWOL).[24]

With respect to overpricing, PASUDECO claims that, as purchasing officer, Roxas had the power to select who would be allowed to bid for items requested and to select the bidder submitting the best bid. It cites in support the affidavit of Elsa Delgado,[25] special assistant to the purchasing officer, that the purchases allegedly made by Roxas were higher than those made by the new purchasing officer, Venicio Jalandoni.

In his Reply Affidavit,[26] Roxas denied liability for any irregularity. Justifying the purchase he made from A. N. Enterprise on March 8, 1990, covered by PO# 10198,[27] Roxas claims that that company offered better terms of payment despite the fact that its price was higher by P2.30 per piece than the price for items purchased by Jalandoni from International Polymer.[28] Although the purchase order might indicate that the same was payable within thirty (30) days, the fact was that this supplier allowed PASUDECO to pay only 5% to 10% of its total outstanding payment within this period. In fact, even the company president, Luis Panlilio, told him to purchase from A. N. Enterprise to assure uninterrupted operation as the delivery of purchases from Perform Philippines (Philippine Synthetic Products, Inc.)[29] at the price of P4.00 per piece was delayed as PASUDECO failed to pay on time. Roxas pointed out that Jalandoni got a volume discount because the latter's purchase was for 800,000 pieces compared to his purchase of 50,000 pieces only. Roxas also claimed that he had to deal with Chief Accountant Tiglao with regard to purchases, while Jalandoni had full discretion and authority to decide and thus had a better credit line than he had.

Roxas attributes the high price of the plastics he purchased to the imminence of war in the Gulf area and to the fact that Jalandoni purchased after the Mt. Pinatubo eruption on June 12, 1991 when "plastic bags became very cheap in price because of their great demand [should be "supply"], that they were even [given] free to victims of lahar/mudflows." [30]

Roxas also pointed out that his purchase price was not really high, because Jalandoni's purchases of plastic bags from International Polymer on February 6, 1991, as covered by PO# 11056,[31] was at the price of P6.38 a piece, which was actually P0.08 higher than A. N. Enterprise's bid.

With respect to the second item, Roxas denies having purchased the bagasse forks[32] because he did not approve and sign the purchase order. He claims that earlier, he made a purchase of the same article from Ryan Machine Shop[33] at P450.00, which was P170.00 lower than Jalandoni's purchase from Hardware Mercantile.[34]

He also denies having purchased the ASSAB 705 under PO# 10139[35] and the rest of the items.[36] Roxas disclaimed involvement in its procurement as shown by the fact that these purchase orders contained no reference to any Abstract of Price Quotation or the list of bids which he prepared. He further averred that he never checked

or approved any of these purchase orders as his signature does not appear therein.

The NLRC correctly found allegations that Roxas had allowed overpricing to be without any basis. The purchase orders show clearly that he did not approve any irregular and unnecessary purchases.

Nor is there evidence that Roxas altered and falsified some purchase orders. It is important to note that the preparation of these purchase orders was done by Norberto Gabriel who took his orders directly from Antonio de Leon, bypassing in the process Manuel Roxas. This was because Roxas had been relieved of his authority to pass upon the purchase orders and to initial them.

Nonetheless, it is contended that Roxas failed to exercise effective supervision over Norberto Gabriel. PASUDECO claims that Roxas admitted that he knew the alterations, falsifications, and insertions made in the purchase orders by Gabriel but did not make any written report.[37]

The contention has no basis. The records show that in 1989 Roxas reported to De Leon the irregularities.[38] However, no action appears to have been taken by the company on the report. Although the report was not in writing but only orally made, to hold him liable for gross negligence on this basis is certainly unreasonable. Gross neglect implies a want or absence of care, a thoughtless disregard of consequences without exerting any effort to avoid them.[39] Breach of trust on the other hand must be willful.[40] It is clear Roxas could not have been guilty of both.

While proof beyond reasonable doubt is not required for the dismissal of employees, there must be substantial evidence supporting it.[41] And the burden of proof rests upon the employer.[42] In the case at bar, petitioner failed to substantiate its charges against Roxas. Not only is evidence wanting to show that private respondent was responsible for the falsification of purchase orders but the fact is that the irregularities were allegedly committed from 1986 to 1990, after he had been relieved of much authority in regard to the procurement of supplies. If private respondent retained the title as purchasing officer of the company after 1982, it was more in name than in fact. It is unfair to charge him with failing to exercise effective supervision of his former assistant, Norberto Gabriel, when the fact is he did not have the corresponding power to make him an effective supervisor.

WHEREFORE, the petition for certiorari is DISMISSED for lack of merit.
SO ORDERED.

Regalado, (Chairman), Romero, and Torres, Jr., JJ., concur.
Puno, J., no part.

[1] NLRC Records, p. 53.

[2] Rollo, p. 121.

[3] Rollo, p. 130.

[4] NLRC Records, Vol. II, p. 676.

[5] Rollo, pp. 69-70.

[6] Philippine Bank of Commerce vs. Macadaeg, 109 Phil. 981, 986 (1960).

[7] Precision Electronics vs. NLRC, 178 SCRA 667 (1989); Del Navarro & Sons Logging Enterprises, Inc. vs. NLRC, 136 SCRA 669 (1985); Gaerlan, Sr. vs. NLRC, 132 SCRA 402, 408 (1984); Cf. Villasanta vs. Bautista, 36 SCRA 161 (1970).

[8] Rollo, p. 140.

[9] See *Padilla vs. Sto. Tomas*, 243 SCRA 155, 160 (1995)

[10] Rollo, p. 116.

[11] 1987 Const., Art. XIII, §3.

[12] *Id.*, Art. II, §18.

[13] *De Ysasi vs. NLRC*, 231 SCRA 173, 184 (1994).

[14] New Labor Code, Arts. 279, 281, 282-284.

[15] NLRC Records, p. 384.

[16] Rollo, pp. 38-39.

[17] TSN, pp. 14, 24, 30-3, Oct. 4, 1991.

[18] Produced before the arbitration proceedings by Bookkeeper Erlinda M. Nery and Senior Bookkeeper Arsenia Cabrera in compliance with the subpoena duces tecum issued by Labor Arbiter Leandro Jose; NLRC Records, pp. 262-267.

[19] NLRC Records, p. 266.

[20] *Cf. Toogue vs. NLRC*, 238 SCRA 241, 246 (1994).

[21] NLRC Records, pp. 252 –254.

[22] *Jackson Building Condominium Corporation vs. NLRC*, 246 SCRA 329, 332 (1995).

[23] NLRC Records, p. 480.

[24] Rollo, p. 21.

[25] *Id.*, pp. 142-145.

[26] *Id.*, p. 161.

[27] NLRC Records, p. 307.

[28] Covered by PO# 2673, dated Sept. 23, 1991; *Id.*, p. 308.

[29] Covered by PO# 10056 and 10153; *Id.*, pp. 483-484.

[30] Rollo, p. 168.

[31] NLRC Records, p. 482.

[32] Covered by PO# 10033, dated January 4, 1990; *Id.*, p. 309.

[33] Covered by PO# 6977, dated March 10, 1987; *Id.*, p. 485.

[34] Covered by PO# 1104, dated February 4, 1991; *Id.*, p. 310.

[35] Dated February 15, 1990; *Id.*, p. 313.

[36] Covered by PO#s 10103, 9140, and 10205; *Id.*, p. 311, 315, and 316 respectively.

[37] TSN, pp. 17-24, February 4, 1993.

[38] *Id.*, pp. 17-18.

[39] Citibank, NA vs. Gatchalian, 240 SCRA 212 (1995).

[40] Philippine Commercial International Bank vs. NLRC, 247 SCRA 614, 624 (1995).

[41] Magnolia Corp. vs NLRC, 250 SCRA 332 (1995); Marcelo vs. NLRC, 240 SCRA 782, 785 (1995).

[42] Sunset View Condominium Corporation vs. NLRC, 228 SCRA 466 (1993).

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