ESTER M. ASUNCION, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, SECOND DIVISION, MABINI MEDICAL CLINIC AND DR. WILFRIDO JUCO, RESPONDENTS.

G.R. No. 129329. July 31, 2001

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

In her petition filed before this Court, Ester Asuncion prays that the Decision, dated November 29, 1996, and the Resolution, dated February 20,1997, of the public respondent National Labor Relations Commission, Second Division, in NLRC CA. 011188 which reversed the Decision of the Labor Arbiter, dated May 15, 1996 be set aside.

The antecedents of this case are as follows:

On August 16, 1993, petitioner Ester M. Asuncion was employed as an accountant/bookkeeper by the respondent Mabini Medical Clinic. Sometime in May 1994, certain officials of the NCR-Industrial Relations Division of the Department of Labor and Employment conducted a routine inspection of the premises of the respondent company and discovered upon the disclosure of the petitioner of (documents) violations of the labor standards law such as the non-coverage from the SSS of the employees. Consequently, respondent Company was made to correct these violations.

On August 9, 1994, the private respondent, Medical Director Wilfrido Juco, issued a memorandum to petitioner charging her with the following offenses:

> - Chronic Absentism (sic) - You have incurred since Aug. 1993 up to the present 35 absences and 23 half-days.
>
> - Habitual tardiness - You have late (sic) for 108 times. As shown on the record book.
>
> - Loitering and wasting of company time - on several occasions and witnessed by several employees.
>
> - Getting salary of an absent employee without acknowledging or signing for it.
>
> - Disobedience and insubordination - continued refusal to sign memos given to you.[1]

Petitioner was required to explain within two (2) days why she should not be terminated based on the above charges.

Three days later, in the morning of August 12, 1994, petitioner submitted her response to the memorandum. On the same day, respondent Dr. Juco, through a letter dated August 12, 1994, dismissed the petitioner on the ground of disobedience of lawful orders and for her failure to submit her reply within the two-day period.

This prompted petitioner to file a case for illegal termination before the NLRC.

In a Decision, dated May 15, 1996, Labor Arbiter Manuel Caday rendered judgment declaring that the petitioner

was illegally dismissed. The Labor Arbiter found that the private respondents were unable to prove the allegation of chronic absenteeism as it failed to present in evidence the time cards, logbooks or record book which complainant signed recording her time in reporting for work. These documents, according to the Labor Arbiter, were in the possession of the private respondents. In fact, the record book was mentioned in the notice of termination. Hence, the non-presentation of these documents gives rise to the presumption that these documents were intentionally suppressed since they would be adverse to private respondent's claim. Moreover, the Labor Arbiter ruled that the petitioner's absences were with the conformity of the private respondents as both parties had agreed beforehand that petitioner would not report to work on Saturdays. The handwritten listing of the days when complainant was absent from work or late in reporting for work and even the computerized print-out, do not suffice to prove that petitioner's absences were unauthorized as they could easily be manufactured.[2] Accordingly, the dispositive portion of the decision states, to wit:

> WHEREFORE, Premises Considered, judgment is hereby rendered declaring the dismissal of the complainant as illegal and ordering the respondent company to immediately reinstate her to her former position without loss of seniority rights and to pay the complainant's backwages and other benefits, as follows:
>
> 1)
>
> P73,500.00 representing backwages as of the date of this decision until she is actually reinstated in the service;
>
> 2)
>
> P20,000.00 by way of moral damages and another P20,000.00 representing exemplary damages; and
>
> 3)
>
> 10% of the recoverable award in this case representing attorney's fees.
>
> **SO ORDERED.[3]**

On appeal, public respondent NLRC rendered the assailed decision which set aside the Labor Arbiter's ruling. Insofar as finding the private respondents as having failed to present evidence relative to petitioner's absences and tardiness, the NLRC agrees with the Labor Arbiter. However, the NLRC ruled that petitioner had admitted the tardiness and absences though offering justifications for the infractions. The decretal portion of the assailed decision reads:

> WHEREFORE, premises considered, the appealed decision is hereby VACATED and SET ASIDE and a NEW ONE entered dismissing the complaint for illegal dismissal for lack of merit.
>
> However, respondents Mabini Medical Clinic and Dr. Wilfrido Juco are jointly and solidarily ordered to pay complainant Ester Asuncion the equivalent of her three (3) months salary for and as a penalty for respondents' non-observance of complainant's right to due process.
>
> SO ORDERED.[4]

Petitioner filed a motion for reconsideration which the public respondent denied in its Resolution, dated February 19, 1997. Hence, petitioner through a petition for certiorari under Rule 65 of the Rules of Court seeks recourse to this Court and raises the following issue:

> THE PUBLIC RESPONDENT ERRED IN FINDING THAT THE PETITIONER WAS DISMISSED BY THE PRIVATE RESPONDENT FOR A JUST OR AUTHORIZED CAUSE.

The petition is impressed with merit.

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Although, it is a legal tenet that factual findings of administrative bodies are entitled to great weight and respect, we are constrained to take a second look at the facts before us because of the diversity in the opinions of the Labor Arbiter and the NLRC.[5] A disharmony between the factual findings of the Labor Arbiter and those of the NLRC opens the door to a review thereof by this Court.[6]

It bears stressing that a worker's employment is property in the constitutional sense. He cannot be deprived of his work without due process. In order for the dismissal to be valid, not only must it be based on just cause supported by clear and convincing evidence,[7] the employee must also be given an opportunity to be heard and defend himself.[8] It is the employer who has the burden of proving that the dismissal was with just or authorized cause.[9] The failure of the employer to discharge this burden means that the dismissal is not justified and that the employee is entitled to reinstatement and backwages.[10]

In the case at bar, there is a paucity of evidence to establish the charges of absenteeism and tardiness. We note that the employer company submitted mere handwritten listing and computer print-outs. The handwritten listing was not signed by the one who made the same. As regards the print-outs, while the listing was computer generated, the entries of time and other annotations were again handwritten and unsigned.[11]

We find that the handwritten listing and unsigned computer print-outs were unauthenticated and, hence, unreliable. Mere self-serving evidence of which the listing and print-outs are of that nature should be rejected as evidence without any rational probative value even in administrative proceedings. For this reason, we find the findings of the Labor Arbiter to be correct. On this point, the Labor Arbiter ruled, to wit:

> x x x In the instant case, while the Notice of Termination served on the complainant clearly mentions the record book upon which her tardiness (and absences) was based, the respondent (company) failed to establish (through) any of these documents and the handwritten listing, notwithstanding, of (sic) the days when complainant was absent from work or late in reporting for work and even the computerized print-outs, do not suffice to prove the complainant's absences were unauthorized as they could easily be manufactured. x x x[12]

In IBM Philippines, Inc. v. NLRC,[13] this Court clarified that the liberality of procedure in administrative actions is not absolute and does not justify the total disregard of certain fundamental rules of evidence. Such that evidence without any rational probative value may not be made the basis of order or decision of administrative bodies. The Court's ratiocination in that case is relevant to the propriety of rejecting the unsigned handwritten listings and computer print-outs submitted by private respondents which we quote, to wit:

> However, the liberality of procedure in administrative actions is subject to limitations imposed by basic requirements of due process. As this Court said in Ang Tibay v. CIR, the provision for flexibility in administrative procedure "does not go so far as to justify orders without a basis in evidence having rational probative value." More specifically, as held in Uichico v. NLRC:
> "It is true that administrative and quasi-judicial bodies like the NLRC are not bound by the technical rules of procedure in the adjudication of cases. However, this procedural rule should not be construed as a license to disregard certain fundamental evidentiary rules. While the rules of evidence prevailing in the courts of law or equity are not controlling in proceedings before the NLRC, the evidence presented before it must at least have a modicum of admissibility for it to be given some probative value. The Statement of Profit and Losses submitted by Crispa, Inc. to prove its alleged losses, without the accompanying signature of a certified public accountant or audited by an independent auditor, are nothing but self-serving documents which ought to be treated as a mere scrap of paper devoid of any probative value."

The computer print-outs, which constitute the only evidence of petitioners, afford no assurance of their authenticity because they are unsigned. The decisions of this Court, while adhering to a liberal view in the conduct of proceedings before administrative agencies, have nonetheless consistently required some proof of

authenticity or reliability as condition for the admission of documents.

In Jarcia Machine Shop and Auto Supply, Inc. v. NLRC,[14] this Court held as incompetent unsigned daily time records presented to prove that the employee was neglectful of his duties:

> Indeed, the DTRs annexed to the present petition would tend to establish private respondent's neglectful attitude towards his work duties as shown by repeated and habitual absences and tardiness and propensity for working undertime for the year 1992. But the problem with these DTRs is that they are neither originals nor certified true copies. They are plain photocopies of the originals, if the latter do exist. More importantly, they are not even signed by private respondent nor by any of the employer's representatives. x x x.

In the case at bar, both the handwritten listing and computer print-outs being unsigned, the authenticity thereof is highly suspect and devoid of any rational probative value especially in the light of the existence of the official record book of the petitioner's alleged absences and tardiness in the possession of the employer company.

Ironically, in the memorandum charging petitioner and notice of termination, private respondents referred to the record book as its basis for petitioner's alleged absenteeism and tardiness. Interestingly, however, the record book was never presented in evidence. Private respondents had possession thereof and the opportunity to present the same. Being the basis of the charges against the petitioner, it is without doubt the best evidence available to substantiate the allegations. The purpose of the rule requiring the production of the best evidence is the prevention of fraud, because if a party is in possession of such evidence and withholds it, and seeks to substitute inferior evidence in its place, the presumption naturally arises that the better evidence is withheld for fraudulent purposes which its production would expose and defeat.[15] Thus, private respondents' unexplained and unjustified non-presentation of the record book, which is the best evidence in its possession and control of the charges against the petitioner, casts serious doubts on the factual basis of the charges of absenteeism and tardiness.

We find that private respondents failed to present a single piece of credible evidence to serve as the basis for their charges against petitioner and consequently, failed to fulfill their burden of proving the facts which constitute the just cause for the dismissal of the petitioner. However, the NLRC ruled that despite such absence of evidence, there was an admission on the part of petitioner in her Letter dated August 11, 1994 wherein she wrote:

> I am quite surprised why I have incurred 35 absences since August 1993 up to the present. I can only surmise that Saturdays were not included in my work week at your clinic. If you will please recall, per agreement with you, my work days at your clinic is from Monday to Friday without Saturday work. As to my other supposed absences, I believe that said absences were authorized and therefore cannot be considered as absences which need not be explained (sic). It is also extremely difficult to understand why it is only now that I am charged to explain alleged absences incurred way back August 1993.[16]

In reversing the decision of the Labor Arbiter, public respondent NLRC relied upon the supposed admission of the petitioner of her habitual absenteeism and chronic tardiness.

We do not subscribe to the findings of the NLRC that the above quoted letter of petitioner amounted to an admission of her alleged absences. As explained by petitioner, her alleged absences were incurred on Saturdays. According to petitioner, these should not be considered as absences as there was an arrangement between her and the private respondents that she would not be required to work on Saturdays. Private respondents have failed to deny the existence of this arrangement. Hence, the decision of the NLRC that private respondent had sufficient grounds to terminate petitioner as she admitted the charges of habitual absences has no leg to stand on.

Neither have the private respondents shown by competent evidence that the petitioner was given any warning or reprimanded for her alleged absences and tardiness. Private respondents claimed that they sent several notices to the petitioner warning her of her absences, however, petitioner refused to receive the same. On this point, the

Labor Arbiter succinctly observed:

> The record is bereft of any showing that complainant was ever warned of her absences prior to her dismissal on August 9, 1994. The alleged notices of her absences from August 17, until September 30, 1993, from October until November 27, 1993, from December 1, 1993 up to February 26, 1994 and the notice dated 31 May 1994 reminding complainant of her five (5) days absences, four (4) half-days and tardiness for 582 minutes (Annex "1" to "1-D" attached to respondent' Rejoinder), fail to show that the notices were received by the complainant. The allegation of the respondents that the complainant refused to received (sic) the same is self-serving and merits scant consideration. xxx[17]

The Court, likewise, takes note of the fact that the two-day period given to petitioner to explain and answer the charges against her was most unreasonable, considering that she was charged with several offenses and infractions (35 absences, 23 half-days and 108 tardiness), some of which were allegedly committed almost a year before, not to mention the fact that the charges leveled against her lacked particularity.

Apart from chronic absenteeism and habitual tardiness, petitioner was also made to answer for loitering and wasting of company time, getting salary of an absent employee without acknowledging or signing for it and disobedience and insubordination.[18] Thus, the Labor Arbiter found that actually petitioner tried to submit her explanation on August 11, 1994 or within the two-day period given her, but private respondents prevented her from doing so by instructing their staff not to accept complainant's explanation, which was the reason why her explanation was submitted a day later.[19]

The law mandates that every opportunity and assistance must be accorded to the employee by the management to enable him to prepare adequately for his defense.[20] In Ruffy v. NLRC,[21] the Court held that what would qualify as sufficient or "ample opportunity," as required by law, would be "every kind of assistance that management must accord to the employee to enable him to prepare adequately for his defense." In the case at bar, private respondents cannot be gainsaid to have given petitioner the ample opportunity to answer the charges leveled against her.

From the foregoing, there are serious doubts in the evidence on record as to the factual basis of the charges against petitioner. These doubts shall be resolved in her favor in line with the policy under the Labor Code to afford protection to labor and construe doubts in favor of labor.[22] The consistent rule is that if doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter. The employer must affirmatively show rationally adequate evidence that the dismissal was for a justifiable cause.[23] Not having satisfied its burden of proof, we conclude that the employer dismissed the petitioner without any just cause. Hence, the termination is illegal.

Having found that the petitioner has been illegally terminated, she is necessarily entitled to reinstatement to her former previous position without loss of seniority and the payment of backwages.[24]

WHEREFORE, the Decision of the National Labor Relations Commission, dated November 29, 1996 and the Resolution, dated February 20, 1997 are hereby REVERSED and SET ASIDE, and the Decision of the Labor Arbiter, dated May 15, 1996 REINSTATED.

SO ORDERED.

Puno, Pardo, and Ynares-Santiago, JJ., concur.
Davide, Jr., C.J., (Chairman), on official leave.

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[1] Letter from Medical Director Wilfrido S. Juco to herein petitioner, dated August 9, 1994; Rollo, p. 104.

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[2] Decision, Labor Arbiter, p. 19; Id., at 78.

[3] Id., at 24-25; Id., at 83-84.

[4] NLRC Decision, p. 17; Id., at 55.

[5] Manila Electric Company v. NLRC and Jeremias Cortez, 263 SCRA 531 (1996).

[6] Manila Mandarin Employees Union v. NLRC, 264 SCRA 320 (1996).

[7] Nagusara v. National Labor Relations Commission, 290 SCRA 245, 254 (1998) citing Philippine Long Distance Telephone Co. v. NLRC, July 31, 1997.

[8] RDS Trucking v. National Labor Relations Commission, 294 SCRA 623, 629 (1998); Maneja v. National Labor Relations Commission, 290 SCRA 603, 620 (1998); Santos v. National Labor Relations Commission, 287 SCRA 117, 122 (1998).

[9] Id., at 623; Lopez v. National Labor Relations Commission, 297 SCRA 508, 516 (1998); Caurdanetaan PieceWorkers Union v. Laguesma, 286 SCRA 401, 434 (1998); Del Monte Philippines, Inc. v. NLRC, 287 SCRA 71, 77 (1998).

[10] Paguio Transport Corporation v. National Labor Relations Commission, 294 SCRA 657, 665-666 (1998).

[11] Rollo, p. 122.

[12] Id., at 78.

[13] 305 SCRA 592 (1999).

[14] 266 SCRA 97 (1997); Ibid.

[15] IBM, Inc. v. NLRC, supra.

[16] Rollo, p. 105.

[17] Id., at 75-76.

[18] Rollo, p. 124.

[19] See note 3.

[20] IBM, Inc. v. NLRC, supra; Maneja v. National Labor Relations Commission, supra.

[21] 182 SCRA 365, 369-370 (1990).

[22] These policies are embodied in Articles 3 and 4 of the Labor Code, which read:

ART. 3. Declaration of basic policy. - The State shall afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed and regulate the relations between workers and employers. x x x [Emphasis supplied].

ART. 4. Construction in favor of labor. - All doubts in the implementation and interpretation of the provisions of this Code, including its implementing rules and regulations, shall be resolved in favor of labor.

[23] Dizon v. NLRC, 180 SCRA 52 (1989).

[24] LABOR CODE, Art. 279.

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