PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, PETITIONER, VS. JOEY B. TEVES, RESPONDENT.

G.R. No. 143511. November 15, 2010

Ponente: PERALTA, J.

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PERALTA, J.:

For review on certiorari are the Decision[1] dated April 24, 2000 and the Resolution[2] dated May 31, 2000 of the Court of Appeals (CA) in CA- G.R. SP No. 50852, affirming the Decision of the National Labor Relations Commission (NLRC) which ordered the reinstatement of respondent Joey B. Teves to his former position without loss of seniority rights and other privileges appurtenant thereto with full backwages until actually reinstated.

The antecedent facts are as follows:

Respondent was employed by petitioner Philippine Long Distance Telephone Company in 1981 as Clerk II until his termination from service on June 1, 1992. Petitioner terminated respondent through an Inter-Office Memorandum[3] dated May 29, 1992 on account of his three (3) unauthorized leaves of absence committed within three (3) years in violation of petitioner's rules and regulations.

Respondent was absent from August 23 to September 3, 1990 as his wife gave birth on August 25 but was only discharged from the hospital on September 2, 1990 due to complications; since they had no household help, he had to attend to his wife's needs in the hospital, as well as the needs of their four kids, including bringing them to school. Respondent called up through a third party to inform petitioner that he would go on an extended leave. Upon his reporting for work on September 4, 1990, he wrote petitioner a letter[4] confirming his leave of absence without pay for that period and stating the reasons thereof, with his wife's medical certificate attached. Dissatisfied, petitioner required respondent to submit further explanation which the latter did reiterating his previous explanation. However, in petitioner's Inter-Office Memorandum[5] dated October 3, 1990, it found respondent's explanation to be unacceptable and unmeritorious for the latter's failure to call, notify or request petitioner for such leave; thus, petitioner suspended respondent from work without pay for 20 days, effective October 8, 1990.

Respondent was absent from May 29 to June 12, 1991. He was sent a Memorandum[6] reminding him of the July 2, 1990 Memorandum requiring written application prior to a leave of absence without pay and was directed to report for work on June 13, 1991 at ten o'clock in the evening lest he be meted a disciplinary action. Respondent reported for work on even date, and was required to explain in writing why no disciplinary action should be taken against him for his unauthorized leave of absence. In a Memorandum[7] dated June 17, 1991, respondent explained that his absences were due to the fact that his eldest and youngest daughter were sick and had to be confined at the nearby clinic; and the medical certificate confirming said confinement was to follow. Further, respondent alleged that he had relayed said message to an officemate, Luis V. Marquez, who unfortunately did not also report for work. As petitioner found respondent's explanation insufficient, respondent was suspended without pay for 45 days effective July 17, 1991.

Eight months thereafter, respondent availed of a seven-day leave of absence and extended such leave to complete his annual vacation leave, which was to end on February 11, 1992. However, respondent failed to report for work from February 11 to February 19, 1992. Petitioner then sent him a Memorandum[8] dated February 19, 1992, directing him to report for duty within 72 hours, otherwise, his services would be terminated for abandonment of work. Respondent reported for duty and was served another Memorandum requiring him to explain in writing why no disciplinary action should be taken against him for his unauthorized absences. In his explanation, respondent stated that he incurred said absences because he had many accounts in the office which were already due and demandable and thought of prolonging such payment by absenting himself. He further stated that he realized that what he did was wrong and only worsened his situation and asked for another chance. Petitioner found such explanation totally unacceptable. Thus, in an Inter-Office Memorandum[9] dated May 29, 1992 addressed to respondent, the latter was terminated from service effective June 1, 1992 due to his third unauthorized absence within a three-year period.

On March 9, 1993, respondent filed a Complaint for illegal suspension, illegal dismissal, payment of two Christmas bonuses and monthly rice subsidy. Petitioner filed its Position Paper.

On May 13, 1994, Labor Arbiter (LA) Benigno C. Villarente, Jr. rendered his Decision,[10] the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered declaring that the dismissal of complainant is LEGAL. Conformably with the preceding discussions, however, respondent is hereby directed to extend complainant financial assistance in the amount of TWENTY THOUSAND PESOS (P20,000.00).
>
> Complainant's claims for bonuses and rice subsidy have not been substantiated and are, therefore, hereby DISMISSED. [11]

In his decision, the LA found that (1) respondent had committed his third unauthorized absence within a three-year period and did not offer an acceptable reason therefor; (2) respondent's repeated unauthorized absences displayed his irresponsibility and lackluster attitude towards work; (3) the reasons for his absences which related to the need to attend to his family cannot mitigate his apparent neglect of duty to his employer; and (4) his absences were in violation of petitioner's rules and regulations. The LA found that respondent was not denied due process, since he was notified of all his infractions and was allowed each time to submit his explanation. The LA awarded financial assistance to respondent as a measure of compassionate justice taking into consideration respondent's 11 years of service and since the infraction committed did not amount to a serious misconduct nor did it involve moral turpitude.

Respondent interposed an appeal with the NLRC.

On January 30, 1997, the NLRC rendered its Decision[12] reversing the LA's Decision, the decretal portion of which reads:

> WHEREFORE, the instant appeal is hereby given due course. The appealed decision is hereby SET ASIDE. Respondent is hereby declared guilty of illegally terminating complainant Joey B. Teves' employment. As such, respondent Philippine Long Distance Telephone Company is hereby ordered to reinstate complainant to his former position without loss of seniority rights and other privileges appurtenant thereto with full backwages until actually reinstated. Respondents are likewise ordered to pay complainant's unpaid wages for the period covering 15-31 May 1992, 13[th] month pay, Christmas Bonuses, accrued rice subsidy of one (1) sack a month, or its money equivalent of P350.00 at the time of his dismissal.[13]

In reversing the LA, the NLRC found that respondent's absences from August 23 to September 3, 1990 was brought to petitioner's attention when respondent called through a third party that respondent would go on an

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extended leave. Moreover, the reason for his prolonged absence, i.e., the unforeseen complications of his wife's condition after giving birth, supported by a medical certificate, was an eventuality that needed to be attended to with priority which should have been accorded credence and favorably considered; and that dismissing such explanation and placing respondent under suspension, when his leave of absence was without pay, merely exacerbated his family's plight.

The NLRC found that respondent's failure to verify whether his message for petitioner through a co-employee that his (respondent) two daughters were sick and confined at a nearby clinic was duly delivered constituted a neglect of duty. However, the NLRC took into consideration respondent's reason for such absence and stated that certain leniency should have been accorded respondent and that his suspension for 45 days was too harsh for the said offense.

While the NLRC found the reason offered by respondent for his absences from February 11 to 19, 1992 unacceptable and unreasonable, respondent should have only been penalized accordingly. The NLRC found that respondent's dismissal from service was illegal, since he had been heavily punished for each and every offense imputed to him and that in his eleven years of service, this was the first time that he was falsely charged.

The NLRC found that petitioner failed to controvert respondent's claims for unpaid salary from May 15 to 31, 1990, 13[th] month pay and Christmas bonuses and rice subsidy for one month or its money equivalent.

Petitioner's motion for reconsideration was denied by the NLRC in a Resolution[14] dated February 26, 1997.

On May 29, 1997, petitioner filed before us a Petition for Certiorari with prayer for the issuance of a temporary restraining order and/or injunction assailing the January 30, 1997 Decision and February 26, 1997 Resolution of the NLRC. Respondent filed his Comment thereto. Petitioner then filed a Reply.

On November 12, 1997, respondent filed a Manifestation[15] stating that he had already been reinstated by petitioner effective November 10, 1997[16] in compliance with the NLRC Decision.

Subsequently, in a Resolution[17] dated December 9, 1998, we referred the petition to the CA in accordance with the St. Martin Funeral Home v. National Labor Relations Commission[18] ruling.

On April 24, 2000, the CA rendered its assailed Decision, which affirmed and reiterated the NLRC decision.

The CA found that (1) petitioner complied with the two-notice requirement which was essential to respondent's right to due process; (2) respondent was given a notice to explain in writing why no disciplinary action should be meted on him for his unauthorized absences from February 11 to 19, 1992; and (3) when respondent's explanation proved unacceptable to petitioner, respondent was sent another notice informing him of his termination by reason of three unauthorized absences within a three-year period, a conduct which was circumscribed in petitioner's rules and regulations. Notwithstanding compliance with the requirement of due process, the CA affirmed the illegality of respondent's dismissal finding that respondent's comportment cannot be characterized as grave so as to constitute grave misconduct; that his first two leaves of absence were satisfactorily justified; and that he should not have been suspended from service by reason of such absences. However, the CA found that respondent's failure to report for work on February 11 to 19, 1992 appeared to be the only unauthorized and unjustified leave of absence during his 11 years of stay with petitioner, and it did not merit the harsh penalty of dismissal.

Petitioner filed a motion for reconsideration, but was denied by the CA in a Resolution dated May 31, 2000.

Hence, this petition. Petitioner raises the following arguments in its Memorandum.

A.

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IT IS ALREADY SETTLED THAT RESPONDENT'S PREVIOUS ABSENCES WERE UNJUSTIFIED AND UNAUTHORIZED IN LIGHT OF HIS VOLUNTARY ACCEPTANCE AND COMPLIANCE WITH THE SUSPENSIONS IMPOSED IN CONNECTION WITH SAID ABSENCES. HENCE, THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN RULING THAT RESPONDENT MERELY COMMITTED ONE INSTANCE OF UNAUTHORIZED ABSENCE.

B.

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ERROR AND ABUSE OF DISCRETION IN FINDING THAT RESPONDENT WAS ILLEGALLY DISMISSED CONSIDERING THAT:

- THE TERMINATION OF RESPONDENT'S SERVICES IS JUSTIFIED APPLYING THE TOTALITY OF INFRACTIONS DOCTRINE.

- THERE IS SUBSTANTIAL AND UNDISPUTED EVIDENCE ESTABLISHING THAT RESPONDENT IS AN ABSENTEE EMPLOYEE WHO HAS A PROPENSITY TO SIMPLY DISAPPEAR WITHOUT EVEN GIVING HIS EMPLOYER THE COURTESY OF A PRIOR NOTICE.[19]

Petitioner contends that the CA erred when it found that (1) what was involved in this case was merely one instance of an unauthorized leave of absence as all of respondent's absences î º where he was previously sanctioned were unauthorized; (2) the imposition of the penalty of suspension to respondent was justified and he had long been estopped from questioning the same; (3) respondent was suspended not so much for the reason behind the absences, but because of the manner by which he incurred the absence, i.e., by not informing petitioner causing undue prejudice to the company's operations; (4) respondent had a propensity to simply disappear without giving petitioner the courtesy of a prior notice; and (5) respondent never questioned the suspensions meted on him, but instead voluntarily complied with the suspensions without protest.

Petitioner argues that respondent's past infractions could be used as supporting justification to a subsequent similar offense which would merit respondent's dismissal; that the CA erred when it did not apply the totality of infractions doctrine but limited respondent's offenses to just one offense; and that respondent's acts of absenting himself without prior notice, despite previous disciplinary actions, should be considered in its totality and not in isolation from one another.

Petitioner contends that the management's right to prescribe rules and regulations cannot be denied and that the employer may justly discharge from employment an employee who violates company rules and regulations. Petitioner avers that respondent's length of service in the company cannot work in his favor, but should be taken against him.

The issue for resolution is whether or not sufficient ground exists for respondent's dismissal from service.

Respondent was terminated from employment by reason of his third unauthorized absence from February 11 to 19, 1992. Respondent absented himself because he had many accounts in the office which were already due and demandable, and he thought that absenting himself from work would prolong the payment of his financial obligations; and that he realized that his action was wrong which worsened his situation and asked for another chance. Such explanation was found by petitioner to be unacceptable; thus, respondent was terminated effective June 1, 1992 for committing three unauthorized absences within a three-year period. Petitioner found respondent to have committed the other two incidents of unauthorized absences from August 23 to September 3, 1990 and from May 29 to June 12, 1991.

The LA found that respondent's dismissal was legal. However, the NLRC found that the two previous incidents of

respondent's alleged unauthorized absences were justified, and that while his absence from February 11 to 19, 1992 was unacceptable and unreasonable, he should have been penalized therefor accordingly, but not with dismissal from service. The CA affirmed the NLRC's findings and concluded that respondent's absences from February 11 to 19, 1992 was his first and only unauthorized absences during his 11 years of stay, and it did not merit the harsh penalty of dismissal.

Petitioner claims that respondent is an absentee employee who has a propensity to simply disappear without giving his employer the courtesy of prior notice; and that respondent was not sanctioned for the reasons given for his absences, but because of his failure to inform or give prior notice to petitioner.

We find partial merit in this argument.

Respondent's first alleged unauthorized absences were from August 23 to September 3, 1990, wherein he went on leave without pay. In his letter dated September 4, 1990 addressed to petitioner, which he submitted upon reporting for work, as well as in his response dated September 10, 1990 to petitioner's memorandum dated September 7, 1990, respondent explained that his absences were due to the fact that his wife gave birth on August 25, but was only discharged from the hospital on September 2, 1990 due to complications; and that since they had no household help, he had to attend to his wife's needs in the hospital, as well as the needs of their four kids, including bringing them to school. Petitioner found the explanation unacceptable and unmeritorious as he did not bother to call, notify or request for a leave of absence; thus, respondent was suspended from service without pay equivalent to 20 days.

Respondent's second alleged unauthorized absences were from May 29 to June 12, 1991. When asked to explain his absences during the said period, respondent explained that his eldest and youngest daughters were sick and were confined at a nearby clinic; and that he relayed such emergency and the fact that he would not be able to report for work to a co-employee, Luis V. Marquez, who unfortunately did not also report for work. Petitioner noted respondent's negligence in failing to notify it of his intention to go on leave, or to verify whether the request for leave, allegedly through a third party, had been approved. Petitioner suspended respondent for 45 days.

Notably, the alleged two prior incidents of respondent's unauthorized absences above-mentioned were due to a family emergency or sickness. Respondent's explanations should have been given a kind consideration by petitioner. An employee cannot anticipate when sickness or emergencies in the family may happen, thus, he may not be able to give prior notice or seek prior approval of his absence, but could only do so after the occurrence of the incident.

However, respondent had shown that he had given petitioner prior notice of his absences from August 23 to September 3, 1990. As the NLRC found, petitioner admitted that "on August 23, 1990, he (respondent) called up through a third party to inform PLDT that he would go on an extended leave." Such admission was even reiterated in petitioner's petition for certiorari filed with us. Notably, when respondent returned for work on September 4, 1990, he immediately submitted a letter to petitioner explaining his absence and attaching a medical certificate thereto to attest to the reason of his absence. Thus, the suspension imposed on him was not proper.

As to respondent's second unauthorized absence, while respondent had relayed his inability to report for work on May 29, 1991 to a co-employee, who unfortunately did not also report for work, he was negligent in not verifying whether his notice of absence had reached petitioner, and the duration of his absence. In fact, in petitioner's Inter-Office Memorandum dated June 12, 1991 sent to respondent, the former asked the latter to report for duty on June 13, 1991 as he had been absent since May 29, to which respondent complied. While respondent offered a justifiable reason for his absences from May 29 to June 12, 1990, i.e., his two daughters were sick and confined at a nearby clinic, however, we find that he failed to give petitioner prior notice of his absence, thus, such absence

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was properly considered as unauthorized.

Thus, respondent's absence from February 11 to 19, 1991 which was made to prolong payment of his demandable financial obligations in the office, and which absence was found by both the NLRC and the CA to be unjustified, was respondent's second unauthorized absence. We find that respondent's termination for committing three unauthorized absences within a three-year period had no basis; thus, there was no valid cause for respondent's dismissal.

Even assuming that respondent's absenteeism constitutes willful disobedience, such offense does not warrant respondent's dismissal.[20] Not every case of insubordination or willful disobedience by an employee reasonably deserves the penalty of dismissal.[21] There must be a reasonable proportionality between the offense and the penalty.[22]

Petitioner's claim that the alleged previous infractions may be used as supporting justification to a subsequent similar offense, which would merit dismissal, finds no application in this case. Respondent's absence from August 23 to September 3, 1990 was justified and not unauthorized as there was prior notice. His absence from May 29 to June 12, 1991, although found to be unauthorized, was not at all unjustified. Thus, his absence during the period from February 11 to 19, 1991, being the only unauthorized and unjustified absence and his second unauthorized absence, should not merit the penalty of dismissal.

While management has the prerogative to discipline its employees and to impose appropriate penalties on erring workers, pursuant to company rules and regulations, however, such management prerogatives must be exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under special laws and valid agreements.[23] The Court is wont to reiterate that while an employer has its own interest to protect, and pursuant thereto, it may terminate an employee for a just cause, such prerogative to dismiss or lay off an employee must be exercised without abuse of discretion. Its implementation should be tempered with compassion and understanding. The employer should bear in mind that, in the execution of said prerogative, what is at stake is not only the employee's position, but his very livelihood,his very breadbasket. [24]

Dismissal is the ultimate penalty that can be meted to an employee.[25] Even where a worker has committed an infraction, a penalty less punitive may suffice, whatever missteps maybe committed by labor ought not to be visited with a consequence so severe.[26] This is not only the law's concern for the workingman. There is, in addition, his or her family to consider. Unemployment brings untold hardships and sorrows upon those dependent on the wage-earner.[27]

Petitioner contends that respondent's length of service in the company cannot work in his favor but, if to be considered at all, should even be taken against him relying on the case of Philippine Airlines, Inc. (PAL) v. NLRC.[28] PAL has no application in this case as it involves a case of a supervisor occupying a position of responsibility, who used trip passes which were falsified to reflect higher priority and space classification than what she and her husband were entitled to on vacation travel in violation of the company policy which served as PAL's basis for losing its trust and confidence on the employee. We considered the infraction committed, together with her twenty years of employment in the company, as reflecting her regrettable lack of loyalty to the company, which loyalty she should have strengthened instead of betrayed. In contrast, the instant infraction committed by respondent during his eleven-year stay with petitioner did not involve the betrayal of petitioner's trust and confidence. Moreover, there was no basis for respondent's termination, on the ground that he had committed his third unauthorized absence within the three-year period as discussed earlier in the decision.

Considering that respondent was illegally dismissed from service, he is entitled to be reinstated, without loss of

seniority rights and the payment of backwages from the time respondent's compensation was withheld from him until his reinstatement on November 12, 1997. However, since we find that respondent's absence from February 11 to 19, 1992 was unjustified and unauthorized, thus, his suspension for thirty days would be in order. Hence, the amount equivalent to the thirty-day suspension, which respondent should have served for his absence on February 11 to 19, 1992, should be deducted from the backwages to be awarded to him.

WHEREFORE, the Decision dated April 24, 2000 and the Resolution dated May 31, 2000 of the Court of Appeals in CA-G.R. SP No. 50852, are hereby AFFIRMED with MODIFICATION that the amount equivalent to respondent's thirty-day suspension is deducted from the award of backwages from the time his compensation was withheld up to his reinstatement on November 12, 1997.

SO ORDERED.

Carpio, (Chairperson), Carpio Morales,[*] Abad, and Mendoza, JJ., concur.

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[*] Designated as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per raffle dated November 3, 2010.

[1] Penned by Associate Justice Martin S. Villarama, Jr. (now a member of this Court), with Associate Justices Cancio C. Garcia and Romeo J. Callejo, Sr. (retired members of this Court), concurring; rollo, pp. 32-39.

[2] Id. at 41.

[3] Id. at 51.

[4] Id at 42.

[5] Id. at 43.

[6] Id. at 45.

[7] Id. at 47.

[8] Id. at 48.

[9] Id. at 51.

[10] Id. at 52-56.

[11] Id. at 56.

[12] Penned by Commissioner Ireneo B. Bernardo, with Presiding Commissioner Lourdes C. Javier and Commissioner Joaquin A. Tanodra, concurring; id. at 58-73.

[13] Id. at 72-73.

[14] Id. at 75-76.

[15] CA rollo, pp. 85-86.

[16] Id. at 87.

[17] Id. at 178-179.

[18] G.R. No. 130866, September 16, 1998, 295 SCRA 494.

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[19] Rollo, pp. 219-220.

[20] Procter and Gamble Philippines v. Bondesto, 468 Phil. 932, 942 (2004).

[21] Id.

[22] Id.

[23] See Marival Trading Inc. v. NLRC, G.R. No. 169600, June 26, 2007, 525 SCRA 708, 730.

[24] Id.

[25] Procter and Gamble Philippines v. Bondesto, supra note 20.

[26] See De Guzman v. NLRC, 371 Phil. 192, 205 (1999).

[27] Id., citing Meracap v. International Ceramics Manufacturing Co., Inc., 92 SCRA 412 (1979); see also Michael Inc. v. NLRC, 326 Phil. 472, 476 (1996); Almira v. B.F. Goodrich Phils. Inc., 157 Phil. 110, 121-122 (1974).

[28] G.R. No. 87353, July 3, 1991, 198 SCRA 748.

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