DR. DANILO T. TING AND MRS. ELENA TING, DOING BUSINESS UNDER THE NAME AND STYLE OF GST FISHING ENTERPRISES,PETITIONERS, VS. HON. COURT OF APPEALS AND PILARDO ISMAEL, RESPONDENTS.

G.R. NO. 146174. July 12, 2006

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This is a Petition for Review on Certiorari of the Decision[1] of the Court of Appeals dated 5 June 2000 and Resolution[2] dated 17 November 2000 in CA-G.R. SP No. 56062, which reversed and set aside the Decision[3] of the National Labor Relations Commission (NLRC) dated 20 May 1999, and affirmed in toto the Decision[4] of the Executive Labor Arbiter dated 15 February 1999. The Executive Labor Arbiter declared illegal the dismissal of private respondent Pilardo Ismael, and ordered petitioner GST Fishing Enterprises and/or Spouses Dr. Danilo Ting and Elena Ting, as owners thereof, to pay private respondent, inter alia, separation pay, backwages, unpaid wages and commissions.

As culled from the evidence on record, petitioner-spouses Danilo and Elena Ting are engaged in the operation of fishing boats plying the Zamboanga, Jolo, and Basilan seas under the business name and style of GST Fishing Enterprises.[5] In March 1974, private respondent Pilardo Ismael was employed by petitioner-spouses as laborer. As such, private respondent was initially assigned to work in fishing boat, "F/B Liza I," one of the five fishing boats owned and operated by petitioner-spouses.[6] In May 1989, private respondent was transferred to "F/B Queen Elena," and designated as the maestro thereof. Finally, in January 1992, private respondent was appointed Chiefmate of "F/B Liza III."

On 24 June 1998, private respondent filed a Complaint[7] with the Regional Arbitration Branch No. IX of the NLRC, Zamboanga City, for illegal dismissal against petitioner-spouses and/or GST Fishing Enterprises, docketed as NLRC Case No. RAB-09-06-00214-98. Private respondent prayed for separation pay and backwages, unpaid wages covering the period of June 1 to 13, 1998, unpaid commission for May 1998, and 13th month differential pay.

In his Position Paper,[8] dated 5 August 1998, private respondent alleged that at the time of his termination, he had worked for more than 24 years as a regular employee of petitioner-spouses; and that on 13 June 1998, he was verbally dismissed by petitioner-spouses from his employment, in disregard of the security of tenure accorded by law to regular employees. In a subsequent Manifestation,[9] dated 9 August 1998, and consequently noted by the Labor Arbiter in the Order[10] of 18 August 1998, private respondent manifested that the dates, "June 1 to 13, 1998" as specified in his Complaint was erroneously included therein, and the same should read, "13th month pay differentials for 1997, 1996, and 1995."

Refuting the charge of illegal dismissal, petitioner-spouses, in their Position Paper[11] contended that on 3 September 1993, private respondent was reprimanded for having sold, while on stream, an undetermined number of tubs of fish to two or more pump boats tailing behind the fishing vessel, "F/B Liza III." Petitioner-spouses

further averred that on 6 July 1995, private respondent was rehired following his promise to reform, and eventually worked as patron/pilot on special license. Moreover, according to petitioner-spouses, private respondent, on several occasions, abandoned his post as patron of "F/B Liza II," while at sea, and boarded another carrier to take him to land, designating his responsibilities to a person not qualified nor authorized to perform the tasks of a patron.[12] On 13 May 1997, private respondent disembarked from "F/B Liza III" despite instructions to the contrary, for which reason he was placed on preventive suspension for a period of 15 days. He was similarly warned that another offense will cause his termination.[13] On 30 March 1998, private respondent, was again placed on preventive suspension for a period of ten days, for disembarking from "F/B Liza-II/35" while the same was operating at the fishing grounds, notwithstanding instruction to the contrary. On 11 June 1998, private respondent abandoned his post as patron of "F/B Liza-V"[14] while on a fishing expedition at sea, and thereafter, boarded a carrier to take him to land. Due to the foregoing incident, on 16 June 1998, petitioner Elena Ting, as Operations Manager of GST Fishing Enterprises, issued a Memorandum[15] to private respondent directing him to explain in writing within 48 hours why he should not be meted out the penalty of termination for gross and serious negligence of duty, prejudicing the interest of the company and placing the lives of the crew at the hands of an unqualified and unauthorized person at the high seas.[16] Petitioner-spouses posited that the Memorandum of 16 June 1998 was served on private respondent, but he refused to sign the same;[17] and failing to file his explanation in writing, private respondent ceased to report to work, and instead, filed a Complaint for illegal dismissal with the Regional Arbitration Branch No. IX of the NLRC.[18]

The Ruling of the Labor Arbiter

Following an exchange of pleadings between the parties, the Executive Labor Arbiter rendered a Decision, dated 15 February 1999, finding for private respondent, and holding his dismissal illegal, thus:

> WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered in the above-entitled case:
>
> 1. Declaring the dismissal of Pilardo Ismael to be illegal, and ordering GST Fishing Enterprises and/or spouses Dr. Danilo Ting and Elena Ting, as owners thereof, to pay said Pilardo Ismael separation and backwages, as well as unpaid wages and commissions, as follows[:]
>
> Separation Pay ---------- P 88,800.00
>
> Backwages ---------- 32,066.66
>
> Unpaid Wages ---------- 1,480.00
>
> Unpaid Commissions ---------- 751.50
>
> TOTAL ---------- P123,098.16
>
> 2. Dismissing complainant's claims for 13th month pay, and wage differentials, for lack of merit. [19]

The Executive Labor Arbiter held that the Memorandum of 16 June 1998 was issued belatedly as private respondent was dismissed on 13 June 1998.[20] Ruling on the substantive aspect of the dismissal, the Executive Labor Arbiter held that there was no just cause for the dismissal on the basis of private respondent's act of leaving work by disembarking from "F/B Liza II"[21] on 11 June 1998 to go to Zamboanga City for medical attention. The Executive Labor Arbiter ratiocinated in this wise:

> Obviously, the complainant was dismissed because he left his lightboad (sic) (F/B "Liza II") and endorsed it to somebody whom the respondents allege was not qualified and authorized to act as "patron" thereof, and went to Zamboanga City, during an ongoing fishing expedition. There is no question about this. But the evidence on

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> records (sic) shows that there was justification for what the complainant did; as already mentioned, he was then suffering from intensifying back and chest pains caused by an upper respiratory infection (Affidavit of Pilardo Ismael, Annex B). Surely, sickness justified an employee's being absent, or leaving his work.
>
> Consequently, there was not (sic) cause for complainant's dismissal on the basis of his leaving work on 11 June 1998 to go to Zamboanga City for medical attention. This, needless to say, renders illegal his dismissal.
>
> Anent [the] two (2) other previous incidents on 13 May 1997 and 30 May 1998 when the complainant also left the fishing boats to which he was assigned, despite instructions of the respondents to the contrary, the complainant had already been punished for these by suspensions. Apparently, his being suspended was proper because there was no explanation for what he did.
>
> But with respect to the latest incident of 11 June 1998, there was reason for him to leave his lightboat. This[,] thus[,] differentiates this incident from the two other previous incidents.[22]

Consequently, the Executive Labor Arbiter awarded to private respondent separation pay in lieu of reinstatement.[23] Moreover, petitioner-spouses were directed to pay private respondent unpaid commissions.[24] However, private respondent's claims for 13th month pay and wage differentials were not granted for lack of basis therefore.[25]

The Ruling of the NLRC

Upon appeal, the NLRC rendered a Decision promulgated on 20 May 1999, declaring that private respondent is not entitled to separation pay and/or backwages, but only to an indemnity of P1,000.00, to be imposed upon petitioner-spouses and/or GST Fishing Enterprises for violating due process of law. The decretal portion thereof reads:

> WHEREFORE, subject to the foregoing discussions, the assailed decision is Modified. Respondents are ordered to pay complainant the sums of P1,000.00, as indemnity and P2,231.50 for the unpaid wages and commissions. [26]

In stark contrast to the conclusion of the Executive Labor Arbiter, the NLRC upheld petitioner-spouses' exercise of management prerogative. It held private respondent's repeated infractions as just cause for his termination from employment, but ordered petitioner-spouses to pay indemnity on account of lack of observance of due process. The NLRC rationalized, thus:

> It is an undisputed fact that on June 11, 1998, complainant, a "patron" of lightboat Liza II, left the fishing ground known as Duhay Bulod and proceeded to Zamboanga City to seek medical help. While in doing so, complainant likewise designated a person, who was not qualified nor authorized to perform the job of a "patron," to assume complainant's duties and responsibilities.
>
> Although complainant's acts (sic) of going back to Zamboanga City due to upper respiratory infections (sic) do not warrant the assailed termination of employment, We cannot however go against the principle of management prerogative after taking into account the attendant facts and circumstances.
>
> Complainant has a history of infractions for which corresponding penalties were meted out. Thus on account of the reported habit of complainant in leaving the workplace without the consent, knowledge and authority of respondents, the line was drawn. On June 11, 1998, complainant left the boat he was assigned to, without informing respondents. Worse, the lives of the crew members were left to an unqualified person designated by complainant. And while at Zamboanga City, complainant did not even inform respondents that the lightboat was manned by another person. Thus, complainant's lack of diligence and care for the lives of the crew left at sea does not deserve commendation.
>
> As clearly pointed out in evidence, complainant was verbally terminated from employment on June 13, 1998,

> while the memorandum requiring an explanation was made on June 16, 1998. This memorandum however did not cure the defect of lack of due process, but, considering the circumstances which led to the termination of employer-employee relationship, which causes are attributed to complainant, We cannot, under the principle of management prerogative, substitute respondents' freedom to administer the affairs of their business enterprise (Chu vs. NLRC, 232 SCRA 764), under the guise of protection of labor, which at the very instance violated the law on life and limb. All said, complainant is not therefore entitled to separation pay and/or backwages, but only to an indemnity of P1,000.00 to be imposed upon the respondents for violating the (sic) due process of law in accordance with the Wenphil ruling of the Supreme Court.[27]

Private respondent's Motion for Reconsideration[28] thereon was denied by the NLRC in the Resolution[29] dated 31 August 1999, for lack of merit. Hence, private respondent filed a Petition for Certiorari[30] with the Court of Appeals, imputing grave abuse of discretion amounting to lack or excess of jurisdiction to the NLRC, when it modified the decision of the Executive Labor Arbiter, and declared private respondent validly terminated from employment.

The Ruling of the Court of Appeals

The Court of Appeals found that private respondent's dismissal on 13 June 1998 was caused verbally and immediately, without observance of due process of law.[31] The appellate court opined that the Memorandum of 16 June 1998, directing private respondent to explain in writing within 48 hours why he should not be terminated, was an afterthought to justify the illegal dismissal. Moreover, the Court of Appeals was not persuaded by petitioner-spouses' reliance on management prerogative in the dismissal of private respondent, ratiocinating that the latter had been duly sanctioned for his past offenses. According to the appellate court, when private respondent left "F/B Liza V" to seek emergency medical help, he cannot be punished for considering his life as primordial over all others.[32] The fallo of the assailed Decision states, thus:

> WHEREFORE, foregoing premises considered, the Petition is herby GIVEN DUE COURSE, and the assailed judgment of the Public Respondent National Labor Relations Commission (Fifth Division, Cagayan de Oro City) REVERSED and SET ASIDE, and the decision of the Executive Labor Arbiter hereby AFFIRMED IN TOTO. [33]

The Court of Appeals rendered a Resolution dated 17 November 2000, denying petitioner-spouses' Motion for Reconsideration of the 5 June 2000 Decision.

Undaunted, petitioner-spouses come to us through the instant Petition for Certiorari, relying on management prerogative as a justification for private respondent's dismissal.

The Issue

The instant case brings to the fore the question of the legitimacy of an employee's dismissal. We are, thus, tasked to settle the sole issue of whether private respondent was illegally dismissed.

The Court's Ruling

To effectuate a valid dismissal from employment by the employer, the Labor Code has set twin requirements, namely: (1) the dismissal must be for any of the causes provided in Article 282[34] of the Labor Code; and (2) the employee must be given an opportunity to be heard and defend himself.[35] The first requisite is referred to as the substantive aspect, while the second is deemed as the procedural aspect.

Deeply entrenched in our jurisprudence is the doctrine that an employer can terminate the services of an employee only for valid and just causes which must be supported by clear and convincing evidence.[36] The employer has the burden of proving that the dismissal was indeed for a valid and just cause.[37] Further, the termination must

be effected in compliance with due process of law. The procedural aspect requires that the employee be given two written notices before he is terminated consisting of a notice which apprises the employee of the particular acts/omissions for which the dismissal is sought, and the subsequent notice which informs the employee of the employer's decision to dismiss him.[38]

We shall now come to a determination of whether the requisites of the law were validly met. On one hand, we have before us petitioner-spouses as employers who anchor their position on management prerogative; and on the other, private respondent, who rely on the security of tenure afforded by the law to the working man.

A. On the Legality of the Act of Dismissal

Petitioner-spouses maintain that the existence of a just cause justified their act of terminating private respondent. It is their contention that private respondent committed a serious offense by leaving the fishing boat in the open sea in the hands of an individual, Francisco Dorens, who was without a license, and therefore not qualified.[39] Petitioner-spouses raise the argument that private respondent's act was fraught with dire consequences, i.e., that the lives of the crew and the safety of the fishing boat were put at great risk and peril; that in the event of a storm or collision, the substitute cannot be expected to steer the fishing boat to safety; and that had the boat capsized, causing oil and gasoline to spill into the ocean, petitioner-spouses will be penalized for the resultant pollution, and will undertake great expense for its clean-up.[40]

At the outset, it must be stated that this Court is not a trier of facts, and this applies with greater force in labor cases.[41] Thus, we do not, in this instant concern ourselves with the question of whether private respondent is a regular employee, the same having been unanimously settled in the proceedings a quo. It is beyond question that private respondent as a regular employee enjoys the protection of the Labor Code on security of tenure. As earlier stated, his termination must comply foremost with the substantive aspect prescribed by the law. Article 279[42] of the Labor Code makes it clear that, in cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by law. Hence, private respondent's dismissal must be based on just or authorized cause enumerated in the Labor Code.

We have said that, in an illegal dismissal case, the onus probandi rests on the employer to prove that its dismissal of an employee is for a valid cause.[43] As noted earlier, petitioner-spouses issued Memorandum dated 16 June 1998 to private respondent, apprising him of the cause of his dismissal. The pertinent portions thereof are reproduced hereunder:

> We have received reports from a very reliable person that you have been abandoning your post on several occasions as "patron" of Lightboat Liza-II on fishing expeditions on high seas and boarding a "Carrier" to go on land.
>
> Moreover, you have designated your responsibilities to a person not qualified nor authorized to perform such tasks as "patron" and have not informed this office of your numerous unauthorized leaves, to the detriment of the company and endangering the lives of your fellow crew members.
>
> In this connection, you are hereby directed to explain in writing within 48 hours why you should not be meted out the penalty of termination from work for "gross and serious negligence of duty, prejudicing the interest of the company and placing the lives of your fellow crew members at the hand of an unqualified and unauthorized person in the high seas."[44]

In the case at bar, petitioner-spouses failed to discharge the burden of proving that the private respondent was dismissed for a just cause as mandated by law. We do not find herein a case of such gross and serious negligence of duty that merits the supreme penalty of termination from employment.

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First. Article 282 of the Labor Code requires that to constitute neglect of duties as a ground for the termination of an employee, the same must not only be gross but also habitual. Department of Labor Manual, Sec. 4343.01(2) provides:

> To constitute a just cause for the employee's dismissal, the neglect of duties must not only be gross but also habitual. Thus, the single or isolated acts of negligence do not constitute a just cause for the dismissal of the employee.
>
> Gross negligence means an absence of that diligence that an ordinarily prudent man would use in his own affairs.
>
> To justify the dismissal of an employee for neglect of duties, however, it does not seem necessary that the employer show that he has incurred actual loss, damage, or prejudice by reason of the employee's conduct. It is sufficient that the gross and habitual neglect by the employee of his duties tends to prejudice the employer's interest since it would be unreasonable to require the employer to wait until he is materially injured before removing the cause of the impending evil.

As borne by the records, while "F/B Liza V" was on a fishing expedition in the open seas, off a site called Duhay Bulod, private respondent boarded a fish carrier to take him to Zamboanga City. He entrusted his responsibility as patron thereof to Francisco Dorens, an individual alleged to be unqualified and unlicensed by petitioner-spouses. Private respondent, for his part, alleged that he delegated his duty to Francisco Dorens for the reasons that: (1) the latter had the responsibility of taking over the duties of the Chiefmate/captain in cases of emergency and unavailability of the captain; and (2) after Francisco Dorens was advised by private respondent of his need to seek medical attention, the former accepted the delegation and agreed to fulfill his duty as substitute.

To our mind, private respondent's act of delegating to Francisco Dorens his duty as patron, and then boarding a carrier to proceed to Zamboanga City for medical emergency cannot be referred to as the gross neglect of duty contemplated by the law to warrant termination. Of pivotal consideration is the unmistakable fact that private respondent was justified in leaving the fishing boat. At dawn of 11 June 1998, he was already experiencing back and chest pains. At six a.m. of the same day, the pains intensified to such a degree that constrained him to seek medical attention. His medical records reveal that on the date of the incident complained of, private respondent was suffering from upper respiratory infection.[45] Private respondent suffered from a physical condition that necessitated his action. The same was done so in earnest. Private respondent cannot, thus, be faulted for attending to his medical concerns. Under the circumstances, he was justified to leave his current duty, and absent himself from work. Indeed, as keenly pointed out by the Executive Labor Arbiter, and seconded by the appellate court, sickness justifies an employee from being absent or leaving his work. To demand from private respondent to remain in "F/B Liza V" despite the excruciating physical pain that he was suffering on the day of 11 June 1998, would be to ignore that labor is a human capital subject to the frailties of the physical body.

Private respondent's act is similarly mitigated by the fact that there was no material prejudice shown as a result of the act of designating "F/B Liza V" to an unlicensed individual. While we are not unmindful that no material injury need be shown to sustain a finding of gross negligence, private respondent was without bad faith and had reasonable basis for designating the fishing boat to Francisco Dorens. Private respondent had believed the latter to be the responsible substitute in cases of emergency due to the unavailability of the captain.[46] Harboring from an intense physical condition that demanded medical attention, it can be said that on 11 June 1998, private respondent merely committed an error in judgment, but not an act so gross as to constitute just cause for his separation. Evidence is wanting as to prove depravity of the act.

We find it equally significant that the Executive Labor Arbiter, the NLRC, and the appellate court unanimously found private respondent's act of disembarking from "F/B Liza V" in order to attend to an emergency medical

matter to be a valid justification therefor. Even the NLRC, which reversed the Executive Labor Arbiter's finding of illegal dismissal, was unequivocal in declaring that private respondent's act, by itself, of going to Zamboanga City due to upper respiratory infection does not warrant termination. The reversal by the NLRC was on the ground of private respondent's past infractions.

Second. Petitioner-spouses was unable to show that the incident of 11 June 1998 was not only gross but habitual. To prove that private respondent's neglect of duty was habitual, petitioner-spouses cite two prior incidents. According to petitioner-spouses, on 13 May 1997, private respondent, who was then assigned to unload fresh fish from "F/B Liza III," disembarked therefrom, notwithstanding instructions that he was to do so only after the unloading of ice and other supplies had been completed. On 30 March 1998, private respondent disembarked from "F/B Liza II," while the same was operating on fishing grounds, and contrary to instructions to wait after the catch was duly loaded and the fishing boat ready to depart for the port.

We are not persuaded. Private respondent had already been adequately penalized for his two prior acts of disembarkation. He was meted out appropriate punishments for the commission of the unwarranted disembarkations of 13 May 1997 and 30 March 1998. As can be gleaned from the records, on 15 to 30 May 1997, private respondent was meted out the penalty of suspension from employment. Likewise, as punishment for the 30 March 1998 incident, he was penalized with suspension for ten days from 30 March to 9 April 1998. The fact that private respondent had been penalized for his two prior infractions cannot be considered in the determination of the habitual nature of neglect of duty under Article 282 of the Labor Code because to do so would be to unduly penalize private respondent twice for his infraction.

Third. We take occasion to stress that there must be a reasonable proportionality between the offense and the gravity of the penalty.[47] At the time of the dismissal, private respondent had worked for the petitioner-spouses and/or GST Fishing Enterprises for 24 years, beginning on March 1974 as laborer, and rising from the ranks to become patron. Verily, not every case of insubordination or willful disobedience by an employee of a lawful work-connected order of the employer is reasonably penalized with dismissal.[48] Dismissal has always been regarded as the ultimate penalty.[49] Security of tenure is one of the highest rights of workers aptly protected and guaranteed by the Constitution, specifically embodied in Section 3, Article XIII[50] thereof.

B. On the Legality in the Manner of Dismissal

The second facet in the case of valid termination from employment is due process. The cardinal rule is that an employee sought to be dismissed must be served two written notices before termination of his employment. The first notice is to apprise the employee of the particular acts or omissions by reason of which his dismissal has been decided upon; and the second notice is to inform the employee of the employer's decision to dismiss him.[51]

Juxtaposing these legal standards against the factual backdrop of the case at bar, we do not find that the procedural rudiments of the law have been complied with.

First. Petitioner-spouses admit the act of verbal termination of private respondent by petitioner Elena Ting on 13 June 1998, following their knowledge of private respondent's disembarkation.[52] Noteworthy is the fact that petitioner-spouses similarly admitted sending to private respondent, a Memorandum dated 16 June 1998, or three days after his verbal termination, requiring the latter to explain within 48 hours his actuation.[53]

Hence, there is no gainsaying that the Memorandum of 16 June 1998 was a vain attempt to correct a procedural infirmity earlier committed by petitioner-spouses. Evidently, the notice sent to private respondent apprising him of the cause of his dismissal and requiring his explanation for the alleged misdeed was a mere afterthought. The Memorandum of 16 June 1998 cannot be said to be in compliance of the procedural requirements of the law. In

illegal termination cases, the procedural requisites must be complied with prior to the dismissal.

Second. We do not think that management prerogative can ever be used as a cloak to render nugatory the constitutional mandate of security of tenure. Management prerogative cannot be so exercised with arbitrariness and in defiance of the due process of the law.

WHEREFORE, the Petition is DENIED. The assailed Decision dated 5 June 2000 of the Court of Appeals, and Resolution dated 17 November 2000 in CA-G.R. SP No. 56062 are AFFIRMED IN TOTO.

Costs against petitioners.

SO ORDERED.

Panganiban, (Chairman), Ynares-Santiago, Austria-Martinez, and Callejo, Sr., JJ., concur.

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[1]Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Ramon Mabutas, Jr. and Demetrio G. Demetria, concurring; Rollo, pp. 28-36.

[2]Penned by Associate Justice Jose L. Sabio, Jr. with Associate Justices Ramon Mabutas, Jr. and Eliezer R. De los Santos, concurring; Id. at 38-41.

[3] Penned by Commissioner Leon G. Gonzaga, Jr. with Presiding Commissioner Salic B. Dumarpa and Commissioner Oscar N. Abella, concurring; Records, Vol. II, pp. 29-34.

[4] Penned by Executive Labor Arbiter Rhett Julius J. Plagata; Records, Vol. I, pp. 194-203.

[5] Records, Vol. I, p. 31.

[6] Id. at 24.

[7] Id. at 1.

[8] Id. at 19-23.

[9] Id. at 30.

[10] Id. at 109.

[11] Id. at 31-35.

[12] Id. at 31.

[13] Id. at 42.

[14] Inadvertently referred to as "Liza II" in some parts of the record.

[15] Records, Vol. I, p. 44.

[16] Id.

[17] Id. at 32.

[18] Id.

[19] Id. at 203.

[20] Id. at 199.

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[21] Also referred to as F/B "Liza V" in Petitioners' Memorandum; See Rollo, p. 5,

[22] Records, Vol. I, pp. 199-200.

[23] Id. at 201.

[24] Id. at 202.

[25] Id. at 202-203.

[26] Records, Vol. II, pp. 29-34.

[27] Id. at 32-33.

[28] Id. at 46-49.

[29] Id. at 68-69.

[30] Id. at 81-99.

[31] Rollo, p. 34.

[32] Id. at 35.

[33] Id.

[34] 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 representatives; and

e. Other causes analogous to the foregoing.

[35] New Ever Marketing, Incorporated v. Court of Appeals, G.R. No. 140555, 14 July 2005, 463 SCRA 284, 295, citing Colegio de San Juan de Letran-Calamba v. Villas, 447 Phil. 692, 698 (2003).

[36] Better Buildings Incorporated v. National Labor Relations Commission, 347 Phil. 521, 528-529 (1997).

[37] Id.

[38] Colegio de San Juan de Letran-Calamba v. Belen P. Villas, supra note 35.

[39] Rollo, pp. 12-13.

[40] Id. at 13.

[41] New City Builders, Incorporated v. National Labor Relations Commission, G.R. No. 149281, 15 June 2005, 460 SCRA 220, 226.

[42] ARTICLE 279. SECURITY OF TENURE. – In cases of regular employment, the employer shall not

terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. (As amended by Sec. 34 Republic Act No. 6715).

[43] R.P. Dinglasan Construction, Incorporated v. Atienza, G.R. No. 156104, 29 June 2004, 433 SCRA 263, 269.

[44] Records, Vol. I, p. 44.

[45] Id. at 28.

[46] Id. at 25.

[47] See Bascon v. Court of Appeals, G.R. No. 144899, 5 February 2004, 422 SCRA 122, 132.

[48] St. Michael's Institute v. Santos, 422 Phil. 723, 734 (2001).

[49] Procter and Gamble Philippines v. Bondesto, G.R. No. 139847, 5 March 2004, 425 SCRA 1, 9.

[50] Section 3, Article XIII of the 1987 Constitution reads:

Section 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.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns to investments, and to expansion and growth.

[51] ACD Investigation Security Agency, Incorporated v. Daquera, G.R. No. 147473, 30 March 2004, 426 SCRA 494, 500; Tingson, Jr. v. National Labor Relations Commission, G. R. No. 84702, 18 May 1990, 185 SCRA 498, 502.

[52] Rollo, p. 7.

[53] Id.

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