ACEBEDO OPTICAL AND MIGUEL ACEBEDO III, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND MELENCIA ASEGURADO, RESPONDENTS.

G.R. NO. 150171. July 17, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

The Case

For Review on Certiorari,[1] under Rule 45 of the Rules of Court, as amended, is the Decision,[2] dated 16 May 2001, of the Court of Appeals in CA-G.R. SP No. 59471, and its Resolution dated 19 September 2001, denying the Motion for Reconsideration of said decision. The Court of Appeals dismissed the petition for certiorari, filed by herein petitioners Acebedo Optical (Corporation) and Miguel Acebedo III (Acebedo) and affirmed in toto the Resolution,[3] dated 17 November 1999, of the National Labor Relations Commission (NLRC)-First Division in NLRC NCR Case No. 00-01-00651-97, which, in turn, sustained the Decision dated 22 May 1998, of Labor Arbiter Emerson C. Tumanon directing herein petitioners to reinstate private respondent Melencia B. Asegurado to her former or equivalent position without loss of seniority rights, for illegally terminating the latter's employment from petitioner corporation; and ordering them to pay her full backwages, service incentive leaves and attorney's fees.

This case stemmed from a complaint for illegal dismissal with prayer for reinstatement and payment of full backwages and other benefits. Said grievance was filed by herein private respondent against herein petitioners on 22 January 1997 before the National Labor Relations Commission.

The facts of the case as synthesized from the records are as follows:

On 16 August 1991, petitioners engaged the services of private respondent as a packaging clerk responsible for the following tasks:

- Receives (sic) product from supplier and sort them out;

- Record incoming and outgoing deliveries to stock ledger and stock card;

- Received (sic) requisition from branch retail outlets;

- Select products from storage and place them inside the box, label the boxes and prepare the corresponding delivery receipts;

- Make physical count at regular intervals and reconciles physical count with book records;

- Other assignments as and when required by supervisor from time to time.[4]

Initially, the private respondent's employment status was probationary. Six months later, or on 1 March 1992, however, she was regularized.

But before her employment status was made permanent, private respondent was given a Memorandum[5] by petitioner Miguel Acebedo III, Operations Manager of petitioner corporation, reading as follows:

> TO : MELENCIA BUTIL
>
> FROM : THE OPERATIONS DEPARTMENT
>
> SUBJECT : WRITTEN WARNING on . . . .
>
> DATE : September 7, 1991
>
> -- - - - - - - - - - - - - - -
>
> As per report of the Personnel Department on the Absences and Tardiness for the month of August, you were found to have 1 hr. & 34 mins. late (sic).
>
> Be informed that habitual absences/tardiness is a grave violation of company policy.
>
> This serves as your written warning.
>
> [Signed]
> MIGUEL R. ACEBEDO III
> Operations Manager

The memorandum was to apprise her of her accumulated tardiness of one hour and a half for the month of August 1991; likewise, it served as a warning to her that habitual tardiness/absenteeism is considered a violation of company policy.

On 15 October 1992, private respondent received another memorandum[6] essentially warning her that habitual tardiness was considered "a grave violation of Company Policy;"[7] but without actually notifying her of the actual period of her alleged tardiness. According to said memorandum, it was to serve as private respondent's first written warning as well. A copy of the communication reads:

> TO : MELENCIA BUTIL
>
> FROM : THE PERSONNEL DEPARTMENT
>
> SUBJECT : AS STATED
>
> DATE : October 15, 1992
>
> -- - - - - - - - - - - - - - -
>
> Be reminded that habitual tardiness is considered a grave violation of Company Policy and is subject to strict disciplinary action.
>
> This will serve as your first written warning.
>
> [Signed]
> THE PERSONNEL DEPARTMENT

On 22 April 1994, a three-day suspension from work was imposed on private respondent on the ground of her being tardy twenty-six times within the period of January to March 1994. The suspension notice was served on her via a Memorandum[8] dated the same day. It was averred that private respondent incurred twenty-six counts of tardiness within the above-specified months which number far exceeded the maximum allowable limit per month of only four times.[9] The third Memorandum states:

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TO : MELENCIA ASEGURADO

FROM : THE PERSONNEL DEPARTMENT

SUBJECT : TARDINESS, Suspension notice on

DATE : APRIL 22, 1994

- - - - -x- -

The report on tardiness for the period January to March 1994, showed that you incurred lates (sic) twenty six (26) times (11, 7, 8) the said numbers exceeded the maximum limit of four times each month.

It is one of the fundamental duties of any employee to follow rules and regulations of the company, and (sic) one of the most basic is the observance of official time. Your 201 file kept two (2) written warnings on tardiness.

This time, you are given a three (3) days suspension without pay effective May 10, 11 & 12, 1994.

Please be advised to manage your time very well to avoid future offenses.

[Signed]
LUTZ PENAFLORIDA
Acting Head – Personnel

On 28 February 1995, private respondent was served a fourth Memorandum.[10] For having incurred twenty-one counts of tardiness for the months of [unreadable] to December 1994, the latter was meted another suspension, this time for seven days, or four days longer than the first. More specifically, it provides:

TO : MELENCIA ASEGURADO

FROM : THE PERSONNEL DEPARTMENT

SUBJECT : TARDINESS, Suspension notice of

DATE : February 28, 1995

- -

The report on tardiness for the period of [unreadable] to December 1994, (sic) showed that you incurred lates (sic) twenty-one (21) times (3, 9, 9), the said number exceeded the maximum limit of four times each month.

Despite of (sic) previous notices and suspension, you still failed to meet the company's policy on attendance. Since the company is implementing [unreadable] Disciplinary Measures for this kind of infraction, you are hereby given seven (7) days suspension which will [unreadable] effective on March 6, 9, 14, 16, 21, 23 & 27, 1995.

Please adhere to the policy [unreadable] failure to improve on this aspect will result in severe penalties.

For your guidance.
[Signed]
LUTZ PENAFLORIDA
Personnel Manager

On 22 May 1995, private respondent filed an application for an indefinite leave of absence. In a Memorandum[11] dated 26 May 1995, petitioner corporation's Head of Personnel denied said application, viz:

TO : MELENCIA B. ASEGURADO

FROM : THE PERSONNEL DEPARTMENT

SUBJECT : STATEMENT OF CHARGE

DATE : May 26, 1995.

- -- - - - - - - - - - - - - - -

Be informed that the indefinite leave of absence which you have filed last May 22, 1995 is not approved, this nature of leave is not being considered in our prescribed policy. Be reminded also that you have accumulated a total of fourteen (14) days absence for this month alone.

Although, (sic) we understood (sic) your reason (no babysitter), we are also concerned about the smooth flow of work in your section. Since you went on leave, some GSD staff took turn (sic) in doing your function. Due to this situation, I am worried that this would led (sic) to confusion, error and delay because there's nobody who is completely in charged (sic) in monitoring their activities.

I am giving you up to the end of the month to sort out your personal problem. Failure to go back to work on June 01, 1995 would make your extended leave of absence unauthorized (sic). This would constitutes (sic) a valid ground for the termination of your services.

For your guidance.

[Signed]
LUTZ PENAFLORIDA
Personnel – Head

On 29 August 1995, private respondent was suspended for the third time, this time for thirteen days. The reason given for the imposition of such penalty was the employee's failure "to meet the company policy on tardiness." The Memorandum[12] reads in full:

TO : MS. MELENCIA ASEGURADO – PACKAGING CLERK

FROM : THE PERSONNEL DEPARTMENT

SUBJECT : SUSPENSION, Notice of

DATE : August 29, 1995

- -- - - - - - - - - - - - - - -

Based on the Tardiness Report, you have accumulated a total of 17 lates for the quarter (April – June).

As per company policy, Head Office employees are limited only to four (4) lates per month or a total of twelve (12) per quarter.

The said policy is being implemented to control excessive lateness and to prevent time being wasted for non-performance.

Despite of (sic) previous warnings and/or suspension given, (March 1995) you still failed to meet the company policy on Tardiness.

You are hereby given a (sic) 13 days suspension which will take effect on Sept. 6, 7, 11, 12, 13, 14, 18, 19, 20, 21, 25, 26 & 27, 1995.

Be advised to observe the said policy accordingly. Future offense will be treated with more severe penalty.

For your guidance.

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[Signed]
LUTZ PENAFLORIDA
Head – Personnel

On 12 November 1996, private respondent did not report for work allegedly due to the demolition of the place that her family was renting.

On 2 December 1996, private respondent again absented herself from work this time because her child was allegedly hospitalized.

Six days later, or on 8 December 1996, the Head of the Personnel Department of petitioner corporation issued a Notice of Termination[13] against private respondent. The memorandum reads:

> TO : MELY ASEGURADO
>
> FROM : THE PERSONNEL DEPARTMENT
>
> SUBJECT : NOTICE OF TERMINATION
>
> DATE : December 08, 1996
>
> -- - - - - - - - - - - - - - - -
>
> Despite several warnings both verbal and written accompanied with suspension, you were found to be abusive in your lates and absences as shown by the result of 1996 Attendance Report for the quarter Jan-Mar. – 12, April-June – 21, July-Sept. – 43, Oct.-Nov. – 17. Only four (4) lates per month or twelve (12) per quarter is allowed. Regarding absences and leaves, you already exhausted the company provision of 8 days sick leave plus 7.5 vacation leave and had accumulated a total of [unreadable] days absences without pay as of December 7, 1996.
>
> This kind of performance is below company standard. Chronic absenteeism combined with abusive tardiness is considered as gross and habitual negligence that constitutes a valid ground for dismissal. Be reminded that you were suspended for 13 days (September '95) for similar infraction and were advised to improve your performance otherwise (sic) facing the maximum penalty is inevitable.
>
> The management has the prerogative to [unreadable] also discipline [unreadable] its employees who are not capable of following their fundamental duty to obey basic rules and regulations of the company in order to protect its interest. Several [unreadable] both verbal and written accompanied with suspension were issued to you but you failed to live up to a higher standard of responsibility.
>
> Please be informed that your services shall be terminated on January 15, 1997 due to gross and habitual neglect of your duty.
>
> For your guidance.
>
> [Signed]
> LUTZ PENAFLORIDA
> Personnel Head

From the aforequoted memorandum, private respondent's dismissal from service was brought on by her supposed exhaustion of the allowable sick and vacation leaves per month constituting "gross and habitual neglect of your duty."[14] Notice of the termination of her employment was received by private respondent "under protest" and six days after the fact, or only on 21 January 1997.

The foregoing state of affairs prompted private respondent to file a case for illegal dismissal with the NLRC the

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very next day.

In a Decision dated 22 May 1998, Labor Arbiter Emerson C. Tumanon rendered judgment declaring private respondent illegally dismissed from service. The Labor Arbiter held that petitioners failed to accord said employee due process of law; and found that private respondent's dismissal from service was anchored on past infractions for which she had already been penalized. Accordingly, the dispositve of the decision states, to wit:

> WHEREFORE, judgment is hereby rendered declaring the dismissal of complainant unlawful and unjustified and ordering the respondents jointly and severally to reinstate said complainant to her former or equivalent position without loss of seniority rights with full backwages which as of the date of this Decision has ballooned to the amount of P79,716.00 plus other benefits such as 13[th] month pay in the amount of P6,643.00 and service incentive leave pay in the amount of P2,628.00.
>
> Respondents are also ordered to pay complainant's counsel ten (10%) percent of the total award recovered as attorney's fees pursuant to law.[15]

On appeal, in a Resolution dated 17 November 1999, public respondent NLRC rendered a decision dismissing petitioners' appeal for allegedly being filed out of time ' long after the assailed decision of the Labor Arbiter had supposedly become final and executory. Accordingly, the assailed decision was affirmed in toto. The decretal portion of the Resolution reads:

> WHEREFORE, premises considered, the instant appeal is hereby DISMISSED for lack of merit. The appealed decision dated May 22, 1998 is hereby AFFIRMED.[16]

Petitioners filed a Motion for Reconsideration[17] which public respondent NLRC denied in its Resolution dated 17 April 2000.

Undaunted, herein petitioners went to the Court of Appeals via a Petition for Certiorari under Rule 65 of the Rules of Court, as amended, ascribing grave abuse of discretion to the National Labor Relations Commission for ordering the payment of backwages, damages and attorney's fees to an employee who had been dismissed for just cause.

On 16 May 2001, the Court of Appeals promulgated its Decision dismissing the petition, the dispositive of which states that:

> IN LIGHT OF ALL THE FOREGOING, the Petition is DENIED due course and is hereby DISMISSED.[18]

In essence, the Court of Appeals held that herein petitioners failed to marshal the obligatory quantum of evidence needed to substantiate a finding of legitimacy or validity in the termination of employment of private respondent, the reason for which was supposedly her repeated defiance of company policy. According to the appellate court, petitioners' failure to adduce in evidence a copy of the contravened company policy was fatal to their cause. Absent proof of evidence of such document embodying the flouted rule, the appellate court, along with the labor arbiter and the NLRC, was unable to make a categorical finding on the issue of whether or not the private respondent's accumulated absences and/or tardiness were, indeed, in violation of petitioner company's rules and regulations. Further, as to the allegation of chronic absenteeism and/or tardiness for the period of 1991 to 1995, the appellate court likewise held that the non-presentation of the Daily Time Records (DTRs) for said period was a grave error. It held that the numerous memoranda issued to private respondent were mere self-serving evidence and made the following observations –

> Petitioners' stance is even incongruent with the evidence on record. Thus, the Private Respondent was employed, (sic) on a probationary basis or status x x x [she] incurred tardiness in the accumulated time of one (1) hour and thirty (30) minutes for the month of August, 1991, and yet, the Private Respondent was promoted

> and made a permanent employee on March 1, 1992.
>
> [A]fter her one (1) hour and thirty – four (34) minute tardiness in September 1991, nothing on record reveals that she had been tardy for the year 1992. The "Memorandum" reminding the Private Respondent about her tardiness did not establish that Private Respondent again incurred any tardiness. It is noted that Private Respondent was not tardy in the year 1993. Although she was tardy during the period from January to March 1994, however, she was ordered suspended on May 10 to 12, 1994. Thereafter, Private Respondent did not report late for the rest of the year as the next "Memorandum" of the Petitioner Corporation was issued on February 28, 1995, informing Private Respondent of her suspension on March 6, 9, 14, 16, 21, 23 and 27, 1995.
>
> Based on the "Memorandum" of the Petitioners, the Private Respondent was tardy for seventeen (17) times for the quarter from April to June, 1995. However, the "Memorandum" of the Petitioners did not indicate the dates and precise times when the Private Respondent was tardy. Without the "Daily Time Records" of the Respondent during the period envisaged in the Memoranda of the Petitioners, it cannot be ascertained whether Private Respondent's tardiness was habitual and incorrigible.[19]

Anent the finding by the NLRC that herein petitioners' appeal was filed out of time, the Court of Appeals clarified that Sec. 224 of the Labor Code requires that both party and counsel must be served their respective copies of the decision of the Labor Arbiter. In the instant case, herein petitioners received a copy of the Labor Arbiter's decision only on 5 March 1999. They then filed an appeal, 15 March 1999. Therefore, it cannot be said that their recourse to the NLRC was filed out of time.

In fine, the Court of Appeals ruled that the appeal, having been filed with the NLRC within the reglementary period, dismissal of the employee was too severe a penalty and, thus, unwarranted. Such conclusion was based on the finding that "even on the assumption that Private Respondent incurred tardiness and/or absences in the course of her employment, she had been duly penalized therefor."[20]

Hence, petitioners, through the instant Petition for Review on Certiorari under Rule 45 of the Rules of Court, as amended, seek recourse to this Court and raise the following issues:[21]

> I.
>
> THE HONORABLE COURT OF APPEALS, WITH ALL DUE RESPECT, COMMITTED PALPABLE AND REVERSIBLE ERROR OF LAW WHEN IT DECLARED RESPONDENT TO HAVE BEEN ILLEGALLY DISMISSED DESPITE OVERWHELMING EVIDENCE SHOWING THAT SHE INCURRED EXCESSIVE TARDINESS AND ABSENTEEISM IN VIOLATION OF THE COMPANY'S RULES AND REGULATIONS WHICH WARRANTED HER TERMINATION FROM WORK; [and]
>
> II.
>
> THE HONORABLE COURT OF APPEALS, WITH ALL DUE RESPECT, COMMITTED PALPABLE AND REVERSIBLE ERROR OF LAW WHEN IT ORDERED RESPONDENT REINSTATED TO HER FORMER POSITION OR TO REINSTATE HER TO HER FOREMER OR EQUIVALENT POSITION WITH FULL BACKWAGES PLUS OTHER BENEFITS[,] SUCH AS 13[TH] MONTH PAY AND SERVICE INCENTIVE LEAVE PAY.

At the outset, it is pertinent to note that the first issue raised by petitioners inquires into the factual findings of the Court of Appeals. They are fundamentally assailing the appellate court's finding that whatever evidence is on record, it is insufficient to establish that company policies were contravened by private respondent. In effect, petitioners would have us sift through the data on record and pass upon whether or not there is sufficient basis to hold private respondent accountable for continually disobeying the "established" company policy respecting

tardiness and absenteeism allegedly amounting to gross and habitual negligence. This clearly involves a factual inquiry, the determination of which is the statutory function of the NLRC.[22]

Elementary is the principle that this Court is not a trier of facts; only errors of law are generally reviewed in petitions for review on certiorari criticizing decisions of the Court of Appeals. Questions of fact are not entertained.[23] And in labor cases, this doctrine applies with greater force.[24] Factual questions are for labor tribunals to resolve.

Judicial Review of labor cases does not go beyond the evaluation of the sufficiency of the evidence upon which its labor officials' findings rest.[25] As such, the findings of facts and conclusion of the NLRC are generally accorded not only great weight and respect but even clothed with finality and deemed binding on this Court as long as they are supported by substantial evidence.[26] This Court finds no basis for deviating from said doctrine without any clear showing that the findings of the Labor Arbiter, as affirmed by the NLRC, are bereft of substantiation. Particularly when passed upon and upheld by the Court of Appeals, they are binding and conclusive upon the Supreme Court and will not normally be disturbed.[27]

Nevertheless, we have reviewed the records of the case at bar and find no reversible error committed by the Court of Appeals concerning the merits of the present petition.

Bearing in mind the facts of the case, petitioners assert that private respondent's numerous tardiness and/or absenteeism is tantamount to gross habitual neglect of duty amounting to gross negligence; thus, a valid ground for dismissal of an employee.

We find the instant petition to be without merit.

The Labor Code, specifically Article 277(b), guarantees the right of an employee to security of tenure. It provides that –

> ART. 277. MISCELLANEOUS PROVISIONS. – x x x
>
> (b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations x x x.

From the foregoing, it is quite clear that the dismissal of private respondent may be upheld only if shown to have been made for a just or authorized cause and attended with due process.

Corollary to the preceding legal policy is the equally basic principle of labor law, that, it is the employer who has the burden of proving that the dismissal is for just cause, and failure to do so would necessarily mean that the dismissal was unjustified; and, therefore, illegal.

In the present petition, the labor arbiter evaluated the evidence presented by herein parties and concluded that private respondent Asegurado was not afforded the due process guaranteed by law and jurisprudence. Moreover, the alluded incidences of absenteeism and tardiness which constituted the charge of habitual neglect of duty amounting to gross negligence were past infractions that have already been penalized.

On appeal, the NLRC affirmed the finding of illegal dismissal.

In agreement with the assailed decisions, the Court of Appeals, heedful of the legal principle that it is the employer which has the onus probandi to prove that private respondent's dismissal was based on valid ground,

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ruled that the Commission committed no grave abuse of discretion when it affirmed the finding by the labor arbiter that the evidence on record was insufficient to sustain the legality of private respondent Asegurado's dismissal from service; therefore, the appellate court dismissed the petition for certiorari filed by petitioners.

As earlier stated, we find no basis for deviating from the oft-espoused legal tenet that findings of facts and conclusion of the labor arbiter are generally accorded not only great weight and respect but even clothed with finality and deemed binding on this Court as long as they are supported by substantial evidence, without any clear showing that such findings of fact, as affirmed by the NLRC, are bereft of substantiation. More so, when passed upon and upheld by the Court of Appeals, they are binding and conclusive upon us and will not normally be disturbed;[28] accordingly, the finding that the alleged absences and incidences of tardiness of private respondent are but past infractions for which petitioners had already imposed several sanctions and for which private respondent had been duly penalized. And being past infractions, they cannot be taken collectively as a justification for the dismissal from service of the employee.[29]

But even assuming for the sake of argument that the past infractions could still validly be the subject of future punishment, still there is no basis for petitioners' claim that private respondent's supposed habitual absenteeism and tardiness is a form of gross and habitual neglect of duty. Under Article 282(b) of the Labor Code, gross and habitual neglect of duty by the employee of his duties is a just cause for the termination of the latter's employment. To warrant removal from service, however, the negligence should not merely be gross but also habitual.[30] In this case, assuming the absences and tardiness of private respondent Asegurado to be habitual, can they also be categorized as gross?

Gross negligence implies a want or absence of or failure to exercise even slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.[31] Though there may have been times when private respondent's absences were undertaken without the necessary approved leave applications, nevertheless, she would send word for when these would occur. Moreover, quite telling is the fact that nowhere in the memoranda sent to private respondent was there any mention of a complaint relating to the quality of her work. As the present case does not show the presence of one of the two requisites to make the finding of negligence a just cause for dismissal. At the most, private respondent should have been further suspended from service for taking for granted that her leave would be approved by the personnel department of petitioner corporation. The penalty of dismissal is too harsh, considering that private respondent had been with the company for five years and, apparently, the management had no complaint as regards the former's quality of work.

Herein, to our mind, petitioners have not sufficiently shown that private respondent had willfully disobeyed the company rules and regulations respecting absences and tardiness. The cause for the termination of private respondent's employment was not simply habitual tardiness and/or absenteeism. Petitioners have alleged time and again that the basis upon which the dismissal of private respondent was anchored was breach or violation of company policy. It was their contention that private respondent's habitual tardiness and/or absences were in violation of petitioner company's rules and regulations. Ironically, though petitioners referred to their company policies, they never presented a copy of these in evidence except in their Motion for Reconsideration - too late in the day. Being the basis of the charge against private respondent, 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 (or none at all save for mere allegation), the presumption naturally arises that the better evidence is withheld for fraudulent purposes which its production would expose and defeat.[32]

By failing to prove the existence of the company rules in due time, i.e., non-presentation of an authenticated copy,

unarguably the best evidence, casts skepticism on the factual basis of the charge of violation thereof; arguably, therefore, it cannot be said that the assailed conduct can be considered gross neglect of duty.

It is indeed true that administrative agencies, like the NLRC, are not bound by the technical rules of procedure and evidence in the adjudication of cases.[33] However, this procedural liberty must not be interpreted to mean an unfettered license to put forth assertions without at least presenting tangible proof to back them up. Otherwise, such assertions would just be allegations, and allegations are not evidence.[34] What is involved here transcends mere procedural technicality and concerns the more paramount principles and requirements of due process, which may not be sacrificed at the altar of expediency. Upon this principle, the failure to present a copy of the supposed Company Policy to prove the allegation of their existence must be seen and taken for what they are – inadmissible hearsay. Mere allegation or assertion, by any stretch of reasoning, cannot be considered substantial evidence of their existence and of the subsequent violation complained of.

From the preceding discussion, the dearth of reliable evidence on record constitutes serious doubt as to the factual basis of the charge of violation of company policy filed against private respondent. This doubt 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.[35] The consistent rule is that if doubts exist between the evidence presented by the employer and the employee, the scales of justice must be titled in favor of the latter. The employer must affirmatively show rationally adequate evidence that the dismissal was for a justifiable cause.[36] Having failed to satisfy this burden of proof, we find that petitioners dismissed private respondent without just cause. Consequently, the termination of her employment was illegal.

To finish, as a final nail to the coffin that is the petitioners' recourse to this Court, we find that private respondent was not accorded due process by petitioners prior to being dismissed from service. Despite the fact that private respondent was repeatedly warned through the numerous memoranda sent to her for coming in late or not reporting at all to the office, she was never asked to defend her position, much less voice an objection to the charges leveled at her.

Law and jurisprudence require an employer to furnish the employee two written notices before termination of his employment may be ordered. The first notice must inform him of the particular acts or omissions for which his dismissal is sought; the second, of the employer's decision to dismiss the employee after he has been given the opportunity to be heard and defend himself.[37] With regard to private respondent, prior to the Notice of Termination, no occasion was given to her to explain her side on why she should not be terminated. There is no evidence that there was an exchange of communication between petitioners and private respondent regarding the latter's supposed infractions. Lest it be forgotten, every opportunity and assistance must be accorded to the employee by the management to enable him to prepare adequately for his defense, including legal representation.[38] No chance whatsoever was given to private respondent in this case. She was simply served her termination notice without being heard in her defense.

In retrospection, if, indeed, private respondent was a delinquent and an errant employee, why did petitioners put up with such behavior for no less than five years?

WHEREFORE, premises considered, the instant petition is hereby DENIED. The assailed Decision dated 16 May 2001, and Resolution dated 19 September 2001, both of the Court of Appeals in CA-G.R. SP No. 59471, are AFFIRMED. Costs against petitioners Acebedo Optical, Inc. and Miguel Acebedo III.

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SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, and Nachura, JJ., concur.

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[1] Rollo, pp. 27-56.

[2] Penned by Associate Justice Romeo J. Callejo (now a retired Associate Justice of this Court) with Associate Justices Renato C. Dacudao and Perlita Tria-Tirona, concurring; id. at 60-71.

[3] Id. at 101-114.

[4] CA rollo, pp. 71-72.

[5] Rollo, p. 152.

[6] Id. at 153.

[7] Id.

[8] The Memorandum was signed by Lutz Peñaflorida, Acting Head, Personnel Department of petitioner Acebedo Optical; id. at 154.

[9] CA rollo, p. 84.

[10] Rollo, p. 155.

[11] Id. at 157.

[12] Id. at 156.

[13] Id. at 182.

[14] Id.

[15] CA rollo, 76.

[16] Id. at 43.

[17] Id. at 150-163.

[18] Rollo, p. 70.

[19] Id. at 69-70.

[20] Id. at 66.

[21] Id. at 39-40.

[22] CBL Transit, Inc. v. National Labor Relations Commission, G.R. No. 128425, 11 March 2004, 425 SCRA 367, 373.

[23] Alfaro v. Court of Appeals, 416 Phil. 310, 317 (2001).

[24] San Juan De Dios Educational Foundation Employees Union-Alliance of Filipino Workers v. San Juan De Dios Educational Foundation, Inc., G.R. No. 143341, 28 May 2004, 430 SCRA 193, 205.

[25] Alfaro v. Court of Appeals, supra note 23 at 318.

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[26] Progressive Development Corp. v. NATIONAL Labor Relations Commission, 398 Phil. 433, 439-440 (2000).

[27] Shoppes Manila, Inc. v. National Labor Relations Commission, 464 Phil. 427, 438-439 (2004).

[28] Id.

[29] Lopez v. National Labor Relations Commission, 358 Phil. 141, 150 (1998).

[30] Union Motor Corporation v. National Labor Relations Commission, G.R. No. 159738, 9 December 2004, 445 SCRA 683, 694-695.

[31] Philippine Aeolus Automotive United Corporation v. National Labor Relations Commission, 387 Phil. 250, 263 (2000).

[32] IBM, Phils., Inc. v. National Labor Relations Commission, 365 Phil. 137, 151 (1999).

[33] Jarcia Machine Shop and Auto Supply v. National Labor Relations Commission, 334 Phil. 84, 92 (1997).

[34] Concepcion v. Court of Appeals, 381 Phil. 90, 97-98 (2000).

[35] Asuncion v. National Labor Relations Commission, 414 Phil. 329, 341 (2001)

[36] Id. at 342.

[37] Rule XIV, Book V, Omnibus Rules Implementing the Labor Code; National Service Corporation v. National Labor Relations Commission, G.R. No. L-69870, 29 November 1988, 168 SCRA 122, 128-129.

[38] Pono v. National Labor Relations Commission, 341 Phil. 615, 621-622 (1997).

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