FELIX B. PEREZ AND AMANTE G. DORIA, PETITIONERS, VS. PHILIPPINE TELEGRAPH AND TELEPHONE COMPANY AND JOSE LUIS SANTIAGO, RESPONDENTS.

G.R. No. 152048. April 07, 2009

Ponente: CORONA, J.

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CORONA, J.:

Petitioners Felix B. Perez and Amante G. Doria were employed by respondent Philippine Telegraph and Telephone Company (PT&T) as shipping clerk and supervisor, respectively, in PT&T's Shipping Section, Materials Management Group.

Acting on an alleged unsigned letter regarding anomalous transactions at the Shipping Section, respondents formed a special audit team to investigate the matter. It was discovered that the Shipping Section jacked up the value of the freight costs for goods shipped and that the duplicates of the shipping documents allegedly showed traces of tampering, alteration and superimposition.

On September 3, 1993, petitioners were placed on preventive suspension for 30 days for their alleged involvement in the anomaly.[1] Their suspension was extended for 15 days twice: first on October 3, 1993[2] and second on October 18, 1993.[3]

On October 29, 1993, a memorandum with the following tenor was issued by respondents:

> In line with the recommendation of the AVP-Audit as presented in his report of October 15, 1993 (copy attached) and the subsequent filing of criminal charges against the parties mentioned therein, [Mr. Felix Perez and Mr. Amante Doria are] hereby dismissed from the service for having falsified company documents.[4] (emphasis supplied)

On November 9, 1993, petitioners filed a complaint for illegal suspension and illegal dismissal.[5] They alleged that they were dismissed on November 8, 1993, the date they received the above-mentioned memorandum.

The labor arbiter found that the 30-day extension of petitioners' suspension and their subsequent dismissal were both illegal. He ordered respondents to pay petitioners their salaries during their 30-day illegal suspension, as well as to reinstate them with backwages and 13[th]month pay.

The National Labor Relations Commission (NLRC) reversed the decision of the labor arbiter. It ruled that petitioners were dismissed for just cause, that they were accorded due process and that they were illegally suspended for only 15 days (without stating the reason for the reduction of the period of petitioners' illegal suspension).[6]

Petitioners appealed to the Court of Appeals (CA). In its January 29, 2002 decision,[7] the CA affirmed the NLRC decision insofar as petitioners' illegal suspension for 15 days and dismissal for just cause were concerned. However, it found that petitioners were dismissed without due process.

Petitioners now seek a reversal of the CA decision. They contend that there was no just cause for their dismissal, that they were not accorded due process and that they were illegally suspended for 30 days.

We rule in favor of petitioners.

RESPONDENTS FAILED TO PROVE JUST
CAUSE AND TO OBSERVE DUE PROCESS

The CA, in upholding the NLRC's decision, reasoned that there was sufficient basis for respondents to lose their confidence in petitioners[8] for allegedly tampering with the shipping documents. Respondents emphasized the importance of a shipping order or request, as it was the basis of their liability to a cargo forwarder.[9]

We disagree.

Without undermining the importance of a shipping order or request, we find respondents' evidence insufficient to clearly and convincingly establish the facts from which the loss of confidence resulted.[10] Other than their bare allegations and the fact that such documents came into petitioners' hands at some point, respondents should have provided evidence of petitioners' functions, the extent of their duties, the procedure in the handling and approval of shipping requests and the fact that no personnel other than petitioners were involved. There was, therefore, a patent paucity of proof connecting petitioners to the alleged tampering of shipping documents.

The alterations on the shipping documents could not reasonably be attributed to petitioners because it was never proven that petitioners alone had control of or access to these documents. Unless duly proved or sufficiently substantiated otherwise, impartial tribunals should not rely only on the statement of the employer that it has lost confidence in its employee.[11]

Willful breach by the employee of the trust reposed in him by his employer or duly authorized representative is a just cause for termination.[12] However, in General Bank and Trust Co. v. CA,[13] we said:

> [L]oss of confidence should not be simulated. It should not be used as a subterfuge for causes which are improper, illegal or unjustified. Loss of confidence may not be arbitrarily asserted in the face of overwhelming evidence to the contrary. It must be genuine, not a mere afterthought to justify an earlier action taken in bad faith.

The burden of proof rests on the employer to establish that the dismissal is for cause in view of the security of tenure that employees enjoy under the Constitution and the Labor Code. The employer's evidence must clearly and convincingly show the facts on which the loss of confidence in the employee may be fairly made to rest.[14] It must be adequately proven by substantial evidence.[15] Respondents failed to discharge this burden.

Respondents' illegal act of dismissing petitioners was aggravated by their failure to observe due process. To meet the requirements of due process in the dismissal of an employee, an employer must furnish the worker with two written notices: (1) a written notice specifying the grounds for termination and giving to said employee a reasonable opportunity to explain his side and (2) another written notice indicating that, upon due consideration of all circumstances, grounds have been established to justify the employer's decision to dismiss the employee.[16]

Petitioners were neither apprised of the charges against them nor given a chance to defend themselves. They were simply and arbitrarily separated from work and served notices of termination in total disregard of their rights to due process and security of tenure. The labor arbiter and the CA correctly found that respondents failed to comply with the two-notice requirement for terminating employees.

Petitioners likewise contended that due process was not observed in the absence of a hearing in which they could have explained their side and refuted the evidence against them.

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There is no need for a hearing or conference. We note a marked difference in the standards of due process to be followed as prescribed in the Labor Code and its implementing rules. The Labor Code, on one hand, provides that an employer must provide the employee ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires:

> 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 promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer. (emphasis supplied)

The omnibus rules implementing the Labor Code, on the other hand, require a hearing and conference during which the employee concerned is given the opportunity to respond to the charge, present his evidence or rebut the evidence presented against him:[17]

> Section 2. Security of Tenure. — x x x
>
> (d) In all cases of termination of employment, the following standards of due process shall be substantially observed:
>
> For termination of employment based on just causes as defined in Article 282 of the Labor Code:
>
> (i) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side.
>
> (ii) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him.
>
> (iii) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination. (emphasis supplied)

Which one should be followed? Is a hearing (or conference) mandatory in cases involving the dismissal of an employee? Can the apparent conflict between the law and its IRR be reconciled?

At the outset, we reaffirm the time-honored doctrine that, in case of conflict, the law prevails over the administrative regulations implementing it.[18] The authority to promulgate implementing rules proceeds from the law itself. To be valid, a rule or regulation must conform to and be consistent with the provisions of the enabling statute.[19] As such, it cannot amend the law either by abridging or expanding its scope.[20]

Article 277(b) of the Labor Code provides that, in cases of termination for a just cause, an employee must be given "ample opportunity to be heard and to defend himself." Thus, the opportunity to be heard afforded by law to the employee is qualified by the word "ample" which ordinarily means "considerably more than adequate or sufficient."[21] In this regard, the phrase "ample opportunity to be heard" can be reasonably interpreted as extensive enough to cover actual hearing or conference. To this extent, Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code is in conformity with Article 277(b).

Nonetheless, Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code should not be taken to mean that holding an actual hearing or conference is a condition sine qua non for compliance with the due process requirement in termination of employment. The test for the fair procedure guaranteed under Article 277(b) cannot be whether there has been a formal pretermination confrontation between the employer and the employee. The "ample opportunity to be heard" standard is neither synonymous nor similar to a formal hearing. To confine the employee's right to be heard to a solitary form narrows down that right. It deprives him of other equally effective forms of adducing evidence in his defense. Certainly, such an exclusivist and absolutist interpretation is overly restrictive. The "very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation."[22]

The standard for the hearing requirement, ample opportunity, is couched in general language revealing the legislative intent to give some degree of flexibility or adaptability to meet the peculiarities of a given situation. To confine it to a single rigid proceeding such as a formal hearing will defeat its spirit.

Significantly, Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code itself provides that the so-called standards of due process outlined therein shall be observed "substantially," not strictly. This is a recognition that while a formal hearing or conference is ideal, it is not an absolute, mandatory or exclusive avenue of due process.

An employee's right to be heard in termination cases under Article 277(b) as implemented by Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code should be interpreted in broad strokes. It is satisfied not only by a formal face to face confrontation but by any meaningful opportunity to controvert the charges against him and to submit evidence in support thereof.

A hearing means that a party should be given a chance to adduce his evidence to support his side of the case and that the evidence should be taken into account in the adjudication of the controversy.[23] "To be heard" does not mean verbal argumentation alone inasmuch as one may be heard just as effectively through written explanations, submissions or pleadings.[24] Therefore, while the phrase "ample opportunity to be heard" may in fact include an actual hearing, it is not limited to a formal hearing only. In other words, the existence of an actual, formal "trial-type" hearing, although preferred, is not absolutely necessary to satisfy the employee's right to be heard.

This Court has consistently ruled that the due process requirement in cases of termination of employment does not require an actual or formal hearing. Thus, we categorically declared in Skipper's United Pacific, Inc. v. Maguad:[25]

> The Labor Code does not, of course, require a formal or trial type proceeding before an erring employee may be dismissed. (emphasis supplied)

In Autobus Workers' Union v. NLRC,[26] we ruled:

> The twin requirements of notice and hearing constitute the essential elements of due process. Due process of law simply means giving opportunity to be heard before judgment is rendered. In fact, there is no violation of due process even if no hearing was conducted, where the party was given a chance to explain his side of the controversy. What is frowned upon is the denial of the opportunity to be heard.
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> x x x x x x x x x
>
> A formal trial-type hearing is not even essential to due process. It is enough that the parties are given a fair and reasonable opportunity to explain their respective sides of the controversy and to present supporting evidence on which a fair decision can be based. This type of hearing is not even mandatory in cases of complaints lodged before the Labor Arbiter. (emphasis supplied)

In Solid Development Corporation Workers Association v. Solid Development Corporation,[27] we had the occasion to state:

> [W]ell-settled is the dictum that the twin requirements of notice and hearing constitute the essential elements of due process in the dismissal of employees. It is a cardinal rule in our jurisdiction that the employer must furnish the employee with two written notices before the termination of employment can be effected: (1) the first apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the second informs the employee of the employer's decision to dismiss him. The requirement of a hearing, on the other hand, is complied with as long as there was an opportunity to be heard, and not necessarily that an actual hearing was conducted.
>
> In separate infraction reports, petitioners were both apprised of the particular acts or omissions constituting the charges against them. They were also required to submit their written explanation within 12 hours from receipt of the reports. Yet, neither of them complied. Had they found the 12-hour period too short, they should have requested for an extension of time. Further, notices of termination were also sent to them informing them of the basis of their dismissal. In fine, petitioners were given due process before they were dismissed. Even if no hearing was conducted, the requirement of due process had been met since they were accorded a chance to explain their side of the controversy. (emphasis supplied)

Our holding in National Semiconductor HK Distribution, Ltd. v. NLRC[28] is of similar import:

> That the investigations conducted by petitioner may not be considered formal or recorded hearings or investigations is immaterial. A formal or trial type hearing is not at all times and in all instances essential to due process, the requirements of which are satisfied where the parties are afforded fair and reasonable opportunity to explain their side of the controversy. It is deemed sufficient for the employer to follow the natural sequence of notice, hearing and judgment.

The above rulings are a clear recognition that the employer may provide an employee with ample opportunity to be heard and defend himself with the assistance of a representative or counsel in ways other than a formal hearing. The employee can be fully afforded a chance to respond to the charges against him, adduce his evidence or rebut the evidence against him through a wide array of methods, verbal or written.

After receiving the first notice apprising him of the charges against him, the employee may submit a written explanation (which may be in the form of a letter, memorandum, affidavit or position paper) and offer evidence in support thereof, like relevant company records (such as his 201 file and daily time records) and the sworn statements of his witnesses. For this purpose, he may prepare his explanation personally or with the assistance of a representative or counsel. He may also ask the employer to provide him copy of records material to his defense. His written explanation may also include a request that a formal hearing or conference be held. In such a case, the conduct of a formal hearing or conference becomes mandatory, just as it is where there exist substantial evidentiary disputes[29] or where company rules or practice requires an actual hearing as part of employment pretermination procedure. To this extent, we refine the decisions we have rendered so far on this point of law.

This interpretation of Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code reasonably implements the "ample opportunity to be heard" standard under Article 277(b) of the Labor Code without unduly restricting the language of the law or excessively burdening the employer. This not only respects the power vested in the Secretary of Labor and Employment to promulgate rules and regulations that will lay down the guidelines for the implementation of Article 277(b). More importantly, this is faithful to the mandate of Article 4 of the Labor Code that "[a]ll doubts in the implementation and interpretation of the provisions of [the Labor Code], including its implementing rules and regulations shall be resolved in favor of labor."

In sum, the following are the guiding principles in connection with the hearing requirement in dismissal cases:

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(a)

"ample opportunity to be heard" means any meaningful opportunity (verbal or written) given to the employee to answer the charges against him and submit evidence in support of his defense, whether in a hearing, conference or some other fair, just and reasonable way.

(b)

a formal hearing or conference becomes mandatory only when requested by the employee in writing or substantial evidentiary disputes exist or a company rule or practice requires it, or when similar circumstances justify it.

(c)

the "ample opportunity to be heard" standard in the Labor Code prevails over the "hearing or conference" requirement in the implementing rules and regulations.

PETITIONERS WERE ILLEGALLY
SUSPENDED FOR 30 DAYS

An employee may be validly suspended by the employer for just cause provided by law. Such suspension shall only be for a period of 30 days, after which the employee shall either be reinstated or paid his wages during the extended period.[30]

In this case, petitioners contended that they were not paid during the two 15-day extensions, or a total of 30 days, of their preventive suspension. Respondents failed to adduce evidence to the contrary. Thus, we uphold the ruling of the labor arbiter on this point.

Where the dismissal was without just or authorized cause and there was no due process, Article 279 of the Labor Code, as amended, mandates that the employee is entitled to reinstatement without loss of seniority rights and other privileges and full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time the compensation was not paid up to the time of actual reinstatement.[31] In this case, however, reinstatement is no longer possible because of the length of time that has passed from the date of the incident to final resolution.[32] Fourteen years have transpired from the time petitioners were wrongfully dismissed. To order reinstatement at this juncture will no longer serve any prudent or practical purpose.[33]

WHEREFORE, the petition is hereby GRANTED. The decision of the Court of Appeals dated January 29, 2002 in CA-G.R. SP No. 50536 finding that petitioners Felix B. Perez and Amante G. Doria were not illegally dismissed but were not accorded due process and were illegally suspended for 15 days, is SET ASIDE. The decision of the labor arbiter dated December 27, 1995 in NLRC NCR CN. 11-06930-93 is hereby AFFIRMED with the MODIFICATION that petitioners should be paid their separation pay in lieu of reinstatement.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Carpio Morales, Tinga, Chico-Nazario, Nachura, Leonardo-De Castro, and Peralta, JJ., concur.
Austria-Martinez[*], J., certify that J. Martinez voted for the ponencia of J. Corona.
Velasco, Jr., J., pls. see separate concurring and dissenting opinion.

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[*] On official leave.

[1] Records, pp. 70-71.

[2] Id., pp. 72-73.

[3] Id., pp. 74-75.

[4] Id., p. 76.

[5] Id., p. 39.

[6] Decision penned by Commissioner Ireneo B. Bernardo, and concurred in by Presiding Commissioner Lourdes C. Javier and Commissioner Joaquin A. Tanodra.

[7] Decision of the Court of Appeals, penned by Associate Justice (now retired Associate Justice of the Supreme Court) Ruben T. Reyes, and concurred in by Associate Justices Renato C. Dacudao and Mariano C. del Castillo of the Ninth Division of the Court of Appeals.

[8] Rollo, p. 34.

[9] Records, p. 107.

[10] Commercial Motors Corporation v. Commissioners, et al., G.R. No. 14762, 10 December 1990, 192 SCRA 191, 197.

[11] Santos v. NLRC, G.R. No. L-76991, October 28, 1988, 166 SCRA 759, 765. De Leon v. NLRC, G.R. No. 52056, October 30, 1980, 100 SCRA 691, 700.

[12] LABOR CODE, Book VI, Title 1, Art. 282 (c).

[13] G.R. No. L-42724, 9 April 1985, 135 SCRA 569, 578.

[14] Imperial Textile Mills, Inc. v. NLRC, G.R. No. 101527, 19 January 1993, 217 SCRA 237, 244-245.

[15] Starlite Plastic Industrial Corp. v. NLRC, G.R. No. 78491, 16 March 1989, 171 SCRA 315, 324.

[16] Omnibus Rules Implementing the Labor Code, Book VI, Rule 1, Sec. 2 (a) and (c).

[17] Section 2(d), Rule I, Implementing Rules of Book VI of the Labor Code.

[18] See Conte v. Palma, 332 Phil. 20 (1996) citing Kilusang Mayo Uno Labor Center v. Garcia, Jr., G.R. No. 115381, 23 December 1994, 239 SCRA 386.

[19] Id. citing Lina Jr. v. Cariño, G.R. No. 100127, 23 April 1993, 221 SCRA 515.

[20] Implementing rules and regulations may not enlarge, alter or restrict the provisions of the law they seek to implement; they cannot engraft additional requirements not contemplated by the legislature (Pilipinas Kao, Inc. v. Court of Appeals, 423 Phil. 834 [2001]).

[21] WEBSTER'S THIRD NEW COLLEGIATE INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED, p. 74, 1993 edition.

[22] Cafeteria Workers v. McElroy, 367 U.S. 886 (1961).

[23] Gonzales v. Commission on Elections, G.R. No. 52789, 19 December 1980, 101 SCRA 752.

> In the landmark case on administrative due process, Ang Tibay v. Court of Industrial Relations (69 Phil. 635 [1940]), this Court laid down seven cardinal primary rights:
>
> (1) The first of these rights is the right to a hearing, which includes the right of the party interested or affected

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> to present his own case and submit evidence in support thereof. x x x (2) Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal must consider the evidence presented. x x x

[24] Rizal CommercialBanking Corporation v. Commissioner of Internal Revenue, G.R. No. 168498, 16 June 2006, 491 SCRA 213.

[25] G.R. No. 166363, 15 August 2006, 498 SCRA 639.

[26] 353 Phil. 419 (1998).

[27] G.R. No. 165995, 14 August 2007, 530 SCRA 132.

[28] 353 Phil. 551 (1998).

[29] See Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985) (Brennan J., concurring in part and dissenting in part) citing Arnett v. Kennedy, 416 U.S. 134 (1974) (Marshall J., dissenting).

[30] Omnibus Rules Implementing the Labor Code, Book V, Rule XXIII, Sec. 9, as amended by Department of Labor and Employment Order No. 9 (1997).

[31] Agabon v. NLRC, G.R. No. 158693, 17 November 2004, 442 SCRA 573, 610.

[32] Panday v. NLRC, G.R. No. 67664, 20 May 1992, 209 SCRA 122, 126-127.

[33] Sealand Service, Inc. v. NLRC, G.R. No. 90500, 5 October 1990, 190 SCRA 347, 355.

C O N C U R R I N G O P I N I O N

BRION, J.

I fully concur with the ponencia of my esteemed colleague, Associate Justice Renato C. Corona. I add these views on the specific issue of whether actual hearing is a mandatory requirement in a termination of employment situation.

The petitioners' position that a formal hearing should be an absolute requirement whose absence signifies the non-observance of procedural due process is an unduly strict view and is not at all what procedural due process requires. This is not the intent behind the Labor Code whose pertinent provision reads:

> ART. 277.
>
> 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 or authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the workers 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 defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to the guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer.

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> The Secretary of Labor and Employment may suspend the effects of the termination pending resolution of the dispute in the event of prima facie finding by the appropriate official of the Department of Labor and Employment before whom such dispute is pending that the termination may cause a serious labor dispute or is in implementation of a mass layoff. (as amended by Republic Act No. 6715)

Historical Roots

At its most basic, procedural due process is about fairness in the mode of procedure to be followed. It is not a novel concept, but one that traces its roots in the common law principle of natural justice.

Natural justice connotes the requirement that administrative tribunals, when reaching a decision, must do so with procedural fairness. If they err, the superior courts will step in to quash the decision by certiorari or prevent the error by a writ of prohibition.[1] The requirement was initially applied in a purely judicial context, but was subsequently extended to executive regulatory fact-finding, as the administrative powers of the English justices of the peace were transferred to administrative bodies that were required to adopt some of the procedures reminiscent of those used in a courtroom. Natural justice was comprised of two main sub-rules: audi alteram partem[2] - that a person must know the case against him and be given an opportunity to answer it; and nemo judex in sua cause debe esse[3] - the rule against bias. Still much later, the natural justice principle gave rise to the duty to be fair to cover governmental decisions which cannot be characterized as judicial or quasi-judicial in nature.[4]

While the audi alteram partem rule provided for the right to be notified of the case against him, the right to bring evidence, and to make argument - whether in the traditional judicial or the administrative setting - common law maintained a distinction between the two settings. "An administrative tribunal had a duty to act in good faith and to listen fairly to both sides, but not to treat the question as if it were a trial. There would be no need to examine under oath, nor even to examine witnesses at all. Any other procedure could be utilized which would obtain the information required, as long as the parties had an opportunity to know and to contradict anything which might be prejudicial to their case."[5]

In the U.S., the due process clause of the U.S. Constitution[6] provides the guarantee for procedural due process, and has used a general balancing formula to identify the procedural guarantees appropriate to a particular context.[7] In Mathews v. Eldridge,[8] Justice Powell articulated this approach when he said:

> In recent years this Court increasingly has had occasion to consider the extent to which due process requires an evidentiary hearing prior to the deprivation of some type of property interest even if such hearing is provided thereafter. In only one case, Goldberg v. Kelly, has the Court ruled that a hearing closely approximating a judicial trial is necessary. In other cases requiring some type of pretermination hearing as a matter of constitutional right, the Court has spoken sparingly about the requisite procedures. [Our] decisions underscore the truism that "[d]ue process, unlike some legal rules, is not a technical conception with a fixed content, unrelated to time, place and circumstances. [Due process] is flexible and calls for such procedural protections as the particular situation demands." Accordingly, the resolution of the issue whether the administrative procedures provided here are constitutionally sufficient requires analysis of the governmental and private interests that are affected. More precisely, our prior decisions indicate that identification of the specific dictates of due process generally requires consideration of three distinct factors: first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Thus, the U.S. approach is to calibrate the procedural processes to be observed in administrative cases based on

specifically defined parameters.

Significantly in the U.S., the same common law root that gave rise to the concept of natural justice and the duty to be fair, branched out into the doctrine of fair procedure applicable to specific private sector actors due to their overwhelming economic power within certain fields (e.g., professional associations, unions, hospitals, and insurance companies). The doctrine requires notice and hearing,[9] but to an extent slightly less than procedural due process; thus, when an association has clearly given a person the benefit of far more procedural protections than he would have been entitled to from a government entity, he has received the benefit of fair procedure and has no cause of action for the mildly adverse action that resulted.[10]

Philippine Due Process Requirement

Article III, Section 1 of the Philippine Constitution contains the constitutional guarantee against denial of due process,[11] and is a direct transplant from an American root - the Bill of Rights of the American Constitution.[12] As in the U.S., our jurisprudence has distinguished between the constitutional guarantee of due process that applies to state action, and the statutory due process guarantee under the Labor Code that applies to private employers.[13] The Labor Code provision, quoted above, is implemented under the Rules Implementing the Labor Code which provides that -

> (d) In all cases of termination of employment, the following standards of due process shall be substantially observed:
>
> For termination of employment based on just causes as defined in Article 282 of the Labor Code:
>
> (i) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side.
>
> (ii) A hearing or conference during which the employee concerned, with the assistance of counsel, if he so desires, is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.
>
> (iii) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.
>
> For termination of employment as defined in Article 283 of the Labor Code, the requirement of due process shall be deemed complied with upon service of a written notice to the employee and the appropriate Regional Office of the Department of Labor and Employment at least thirty days before effectivity of the termination, specifying the ground or grounds for termination.
>
> If the termination is brought about by the completion of a contract or phase thereof, or by failure of an employee to meet the standards of the employer in the case of probationary employment, it shall be sufficient that a written notice is served the employee within a reasonable time from the effective date of termination.[14]

Jurisprudence has expounded on the guarantee and its implementation by reiterating that the employer must furnish the worker to be dismissed with two written notices before termination of employment can be effected: a first written notice that informs the worker of the particular acts or omissions for which his or her dismissal is sought, and a second written notice which informs the worker of the employer's decision to dismiss him.[15] Between these two notices, the worker must be afforded ample opportunity to be heard in the manner the ponencia has very ably discussed.

The Confusion and Submission

Apparently, confusion has resulted in construing what "ample opportunity to be heard" requires because the

implementing rules of the Labor Code themselves require that there be an actual hearing despite the clear text of the Labor Code that only requires ample opportunity to be heard.

I submit that in the absence of a clear legislative intent that what is intended is an actual hearing, the Court cannot construe the statutory procedural due process guaranty as an absolute requirement for an actual hearing in the way that at least two cases, namely King of Kings of Transport, Inc. v. Mamac[16] and R.B. Michael Press v. Galit[17] now require.

a. Historical Reason.

Procedural due process cannot be read completely dissociated from its roots. While the concept of procedural fairness that it embodies originated as a requirement in judicial proceedings, the concept has been extended to procedures that were not strictly judicial as regulatory factfinding was devolved and delegated to administrative tribunals. The devolution was driven by need; it was beyond the capability of the courts to attend to the ever-increasing demands of regulation as society became increasingly complex. As discussed above, a trial-type procedure is not an absolute necessity in administrative due process. In fact, in the U.S., not every administrative decision-making requires a hearing.[18] As the U.S. Supreme Court stated in the Mathews ruling we quoted above: "[d]ue process, unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances. [Due process] is flexible and calls for such procedural protections as the particular situation demands."[19] [Italics supplied]

b. Philippine Procedural Due Process Developments.

Our Constitution does not expressly define the principles that embody due process, as it is a concept intended to counterbalance a flexible power of state - police power. Early on, jurisprudence has recognized distinctions between procedural due process in judicial proceedings and in administrative proceedings.

In a long line of cases starting with Banco Espanol v. Palanca,[20] the requirements of procedural due process in judicial proceedings have been defined.[21] In these proceedings, the quantum of evidence that the prosecution must meet in criminal cases is proof beyond reasonable doubt,[22] while in civil cases the standard has been described as "preponderance of evidence."[23] The requirements of procedural due process in administrative proceedings have been similarly defined in the early case of Ang Tibay v. CIR.[24] The proof required in these proceedings is the lower standard of "substantial evidence."[25]

The quantum of evidence required in these proceedings impacts on their hearing requirements. While both judicial and administrative proceedings require a hearing and the opportunity to be heard, they differ with respect to the hearing required before a decision can be made. In criminal cases where a constitutional presumption of innocence exists, procedural judicial due process requires that judgment be rendered upon lawful hearing where factual issues are tested through direct and cross-examination of witnesses to arrive at proof beyond reasonable doubt. In civil cases, evidentiary hearings are likewise a must to establish the required preponderance of evidence.[26] Administrative due process, on the other hand, requires that the decision be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties concerned.[27] Thus, substantial reasons justify the variance in the hearing requirements for these proceedings.

c. Due Process in the Private Employment Setting.

Separately from the requirement of due process when State action is involved, the Constitution also guarantees security of tenure to labor,[28] which the Labor Code implements by requiring that there be a just or authorized cause before an employer can terminate the services of a worker.[29] This is the equivalent of and what would have satisfied substantive due process had a State action been involved. The equivalent of procedural due process

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is detailed under Article 277 of the Labor Code, heretofore quoted, which requires notice and ample opportunity to be heard, both of which are fleshed out in the Implementing Rules of Book VI and in Rule XXIII of Department Order No. 9, Series of 1997, of the Department of Labor.

Thus, from the concept of due process being a limitation on state action, the concept has been applied by statute in implementing the guarantee of security of tenure in the private sector. In Serrano v. NLRC,[30] we had the occasion to draw the fine distinction between constitutional due process that applies to governmental action, and the due process requirement imposed by a statute as a limitation on the exercise of private power. Noting the distinctions between constitutional due process and the statutory duty imposed by the Labor Code, the Court thus decided in Agabon v. NLRC[31] to treat the effects of failure to comply differently.

d. No Actual Hearing Requirement in the Labor Code.

That an actual hearing in every case is not intended by the Labor Code in dismissal situations is supported by its express wording that only requires an "ample opportunity to be heard," not the "hearing or conference" that its implementing rules require.

The "ample opportunity" required to be provided by the employer is similar in character to the process required in administrative proceedings where, as explained above, an actual hearing is not an absolute necessity. To be sure, it cannot refer to, or be compared with, the requirements of a judicial proceeding whose strict demands necessarily require a formal hearing.

"Judicial declarations are rich to the effect that the essence of due process is simply an opportunity to be heard, or as applied to administrative proceedings, an opportunity to explain one's side. A formal or trial type hearing is not at all times and in all circumstances essential to due process, the requirements of which are satisfied where the parties are afforded fair and reasonable opportunity to explain their side in the controversy."[32] In Arboleda v. NLRC,[33] we held that:

> The requirement of notice and hearing in termination cases does not connote full adversarial proceedings as elucidated in numerous cases decided by this Court. Actual adversarial proceedings become necessary only for clarification or when there is a need to propound searching questions to witnesses who give vague testimonies. This is a procedural right that the employee must ask for since it is not an inherent right, and summary proceedings may be conducted thereon.

To the same effect is the following statement of Mr. Chief Justice Reynato S. Puno, albeit in a dissenting opinion, in Agabon: "[t]his is not to hold that a trial-type proceeding is required to be conducted by employers. Hearings before the employers prior to the dismissal are in the nature of and akin to administrative due process which is free from the rigidity of certain procedural requirements," citing Mr. Justice Laurel's dictum in the landmark Ang Tibay v. Court of Industrial Relations. We have even held in China Banking Corporation v. Borromeo[34] that no formal administrative investigation is necessary in the process of dismissing an employee where the employee expressly admitted his infraction. All that is needed is to inform the employee of the findings of management.

The identity of the actor should not also be lost on us in considering the "ample opportunity" requirement. Judicial and quasi-judicial processes are undertaken by the state, while the dismissal action the Labor Code regulates is undertaken by a private sector employer. A distinction between these actors ought to be recognized and given a proper valuation in considering the processes required from each. Due process in the private realm does not address an all-powerful State clothed with police power and the powers of taxation and eminent domain; it merely addresses a private sector-employer who, constitutionally, shares the same responsibility with the worker for industrial peace, and who is also entitled to reasonable returns on investments and to expansion and growth.[35] Proportionality with the power sought to be limited dictates that due process in its flexible signification be applied

to a private sector dismissal situation, ensuring only that there is fairness at all times so that the constitutional guarantee of security of tenure is not defeated. Thus, the required processes in a private sector dismissal situation should, at the most, be equivalent to those required in administrative proceedings; whether an actual hearing would be required should depend on the circumstances of each case.

Last but not the least, reasonableness and practicality dictate against an actual hearing requirement in every case of dismissal. There are simply too many variables to consider in the private sector dismissal situation - ranging from the circumstances of the employer, those of the employee, the presence of a union, and the attendant circumstances of the dismissal itself - so that a hard and fast actual hearing requirement may already be unreasonable for being way beyond what the statutory procedural due process requirement demands. Such a requirement can also substantially tie-up management operations and defeat the efficiency, growth and the profits that management and employees mutually need.

To recapitulate, the "ample opportunity to be heard" the Labor Code expressly requires does not mean an actual hearing in every dismissal action by the employer; whether an actual hearing would be required depends on the circumstances of each case as each particular situation demands. Thus, the identical rulings in King of Kings of Transport, Inc. vs. Mamac[36] and R.B. Michael Press vs. Galit[37] that an actual hearing is a mandatory requirement in employee dismissal should now be read with our present ruling in mind. The Department of Labor and Employment should as well be on notice that this ruling is the legally correct interpretation of Rule I, Section (2)(d)(ii) of Book VI of the Rules to Implement the Labor Code.

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[1] See: Jones, D.P. and De Villars A., Principles of Administrative Law (1985 ed.), pp. 148-149.

[2] Literally, "let the other side be heard."

[3] "No one can be the judge in his own cause."

[4] Supra note 1, pp. 157-160, citing Ridge v. Baldwin, [1963] 2 All E.R. 66 (H.L.)

[5] Supra note 1, p. 200.

[6] UNITED STATES Constitution, 14[th] Amendment.

[7] See: Gunther, Constitutional Law, (11[th] ed.), pp. 583-585.

[8] 425 U.S. 319 (1976).

[9] See: Potvin v. Metropolitan Life Insurance Co., 22 Cal. 4[th] 1060 (2000).

[10] Dougherty v. Haag, 165 Cal. App. 4[th] 315 (2008).

[11] No person shall be denied the right to life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws.

[12] Supra note 6.

[13] Serrano v. NLRC, G.R. No. 117040, January 27, 2000, 323 SCRA 44; Agabon v. NLRC, G.R. No. 158693, Nov. 17, 2004, 442 SCRA 573.

[14] Implementing Rules of Book VI of the Labor Code, Rule 1, Section 2, as amended by Department Order No. 10, series of 1997.

[15] Tiu v. NLRC, G.R. No. 83433, November 12, 1992, 215 SCRA 540; see also: Serrano and Agabon cases,

supra note 13.

[16] G.R. No. 166208, June 29, 2007, 526 SCRA 116.

[17] G.R. No. 153510, February 13, 2008, 545 SCRA 23.

[18] Supra note 7.

[19] Supra note 8.

[20] 37 Phil. 921 (1918).

[21] The requirements of due process in judicial proceedings are as follows: 1) an impartial court or tribunal clothed with judicial power to hear and determine the matter before it; 2) jurisdiction lawfully acquired over the person of the defendant and over the property which is the subject matter of the proceeding; 3) an opportunity to be heard afforded to the defendant; and 4) judgment rendered upon lawful hearing.

[22] People v. Berroya, G.R. No. 122487, December 12, 1997, 283 SCRA 111.

[23] Supreme Transliner, Incorporated v. Court of Appeals, G.R. No. 125356, November 21, 2001, 370 SCRA 41.

[24] 69 Phil. 635 (1940); the observance of due process in administrative proceedings requires the following: (1) the right to a hearing, which includes the right of the party interested to present his own case and submit evidence in support thereof; (2) the tribunal must consider the evidence presented; (3) the decision must be supported by evidence; (4) the evidence must be substantial; (5) the decision must be rendered on the evidence present at the hearing, or at least contained in the record and disclosed to the parties affected; (6) the administrative body or any of its judges must act on its or his own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate; and (7) the administrative body should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decisions rendered.

[25] Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. See Domasig v. National Labor Relations Commission, G.R. No. 118101, September 16, 1996, 261 SCRA 779.

[26] See People v. Dapitan, G.R. No. 90625, May 23, 1991, 197 SCRA 378, citing People v. Castillo, 76 Phil. 72 (1946); Banco Español de Filipino v. Palanca, supra at note 20; Macabingkil v. Yatco, 21 SCRA 150 (1967); Apurillo v. Garciano, 28 SCRA 1054 (1969); Shell Company of the Philippines, Ltd. v. Enage, 49 SCRA 416 (1973); Lorenzana v. Cayetano, 68 SCRA 485 (1975).

[27] Cuenca v. Atas, G.R. No. 146214, October 5, 2007, 535 SCRA 48; Alliance of Democratic Free Labor Organization v. Laguesma, G.R. No. 108625, March 11, 1996, 254 SCRA 565.

[28] CONSTITUTION, Article XIII, Section 3, par. 2.

[29] LABOR CODE, Article 279.

[30] Supra note 13.

[31] G.R. No. 158693, November 17, 2004, 442 SCRA 573.

[32] Neeco III v. NLRC, G.R. No. 157603, June 23, 2005, 461 SCRA 169.

[33] G.R. No. 119503, February 11, 1999, 303 SCRA 38.

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[34] G.R. No. 156515, October 19, 2004, 440 SCRA 621.

[35] CONSTITUTION, Article XIII, Section 3, pars. 3 and 4.

[36] Supra note 16.

[37] Supra note 17.

S E P A R A T E C O N C U R R I N G

A N D D I S S E N T I N G O P I N I O N

VELASCO, JR., J.:

I concur in my esteemed colleague's well-written ponencia, except in one issue, to which I hereby register my dissent.

In gist, the facts as contained in the ponencia show that Felix B. Perez and Amante G. Doria were dismissed by the Philippine Telegraph and Telephone Company without a hearing or conference for a series of allegedly anomalous transactions.

The only issue covered by my dissent is, are Perez and Doria entitled to a hearing or conference as mandated by Section 2(b), Rule XXIII, Implementing Rules of Book V of the Labor Code?

The ponencia resolved this in the negative and held that Sec. 2(b), Rule XXIII, Implementing Rules of Book V,[1] by requiring a hearing, went beyond the terms and provisions of the Labor Code, particularly Article 277(b) thereof that merely requires the employer to provide employees with ample opportunity to be heard and to defend themselves with the assistance of their representatives if they so desire. The ponencia, however, conceded that a formal hearing or conference becomes mandatory only when requested by the employee in writing or substantial evidentiary disputes exist or a company rule or practice requires it or when similar circumstances justify. I submit that the actual hearing or conference is mandatory in ALL dismissal cases for the following reasons:

(1) Art. 277(b) of the Labor Code provides that:

> (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 promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer. (Emphasis supplied.)

The aforequoted provision states that employees are to be given "ample" opportunity to be heard and defend themselves. However, the word "ample" is vague and not defined in the said provision. Since the meaning of this word is unclear, then it should be given a liberal construction to favor labor. "Ample" means "considerably more than adequate or sufficient."[2] Ample opportunity can be construed to be broad enough to encompass an actual hearing or conference. To be sure, opportunity to be heard does not exclude an actual or formal hearing since such requirement would grant more than sufficient chance for an employee to be heard and adduce evidence. In this

sense, I believe there is no discrepancy between Art. 277 and the Implementing Rule in question.

The Implementing Rules thus makes available for employees a considerably or generously sufficient opportunity to defend themselves through a hearing or conference. In Tanala v. NLRC, we said that:

> With respect to the issue of whether petitioner was denied due process in the administrative procedure entailed in his dismissal, we agree with the labor arbiter that petitioner was indeed denied procedural due process therein. His dismissal was not preceded by any notice of the charges against him and a hearing thereon. The twin requirements of notice and hearing constitute the essential elements of due process in cases of dismissal of employees. The purpose of the first requirement is obviously to enable the employee to defend himself against the charge preferred against him by presenting and substantiating his version of the facts.
>
> Contrary to the findings of the NLRC, the notice of preventive suspension cannot be considered as an adequate notice. Even the fact that petitioner submitted a written explanation after the receipt of the order of suspension is not the "ample opportunity to be heard" contemplated by law. Ample opportunity to be heard is especially accorded to the employee sought to be dismissed after he is informed of the charges in order to give him an opportunity to refute such accusations levelled against him.
>
> Furthermore, this Court has repeatedly held that to meet the requirements of due process, the law requires that an employer must furnish the worker sought to be dismissed with two written notices before termination of employment can be legally effected, that is, (1) a notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the subsequent notice, after due hearing, which informs the employee of the employer's decision to dismiss him.[3] (Emphasis supplied.)

(2) The ponencia seems to underscore the absence of any mention of an "actual hearing" in Art. 277(b). It is conceded that there is no explicit mention of an actual hearing or conference in said legal provision. As earlier discussed, the requisite hearing is captured in the phrase "ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires." Even if the phrase "actual hearing" is not specified in Art. 277(b), the same thing is true with respect to the second written notice informing the employee of the employer's decision which is likewise unclear in said provision. Thus, the fact that Art. 277(b) does not expressly mention actual hearing in Art. 277(b) does not bar the Secretary of Labor from issuing a rule (Sec. 2[d][ii], Rule I, Implementing Rules of Book VI of the Labor Code) implementing the provision that what really is meant is an actual hearing or conference. It should be noted that the Secretary of Labor also issued a rule on the need for a second written notice on the decision rendered in the illegal dismissal proceedings despite the silence of Art. 277(b) on the need for a written notice of the employer's decision.

(3) The majority opinion cites the rule in statutory construction that in case of discrepancy between the basic law and its implementing rules, the basic law prevails. In the case at bar, said principle does not apply because precisely there is no clear-cut discrepancy between Art. 277(b) of the Labor Code and Sec. 2(b), Rule XXIII, Implementing Rules of Book V of the Labor Code. To the extent of being repetitive the phrase "ample opportunity to be heard" can be construed to cover an actual hearing. This way, Sec. 2(b), Rule XXIII does not conflict with nor contravene Art. 277(b).

(4) Art. 4 of the Labor Code states that "all doubts in the implementation and interpretation of the provisions of [the Labor Code], including its implementing rules and regulations, shall be resolved in favor of labor." Since the law itself -invests the Department of Labor and Employment (DOLE) the power to promulgate rules and regulations to set the standard guidelines for the realization of the provision, then the Implementing Rules should be liberally construed to favor labor. The Implementing Rules, being a product of such rule-making power, has the force and effect of law. Art. 277 of the Labor Code granted the DOLE the authority to develop the guidelines to enforce the process. In accordance with the mandate of the law, the DOLE developed Rule I, Sec. 2(d) of the

Implementing Rules of Book VI of the Labor Code which provides that:

> (d) In all cases of termination of employment, the following standards of due process shall be substantially observed:
>
> For termination of employment based on just causes defined in Article 282 of the Labor Code:
>
> (i) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side.
>
> (ii) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.
>
> (iii) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.

In any case, the standards of due process contained in Sec. 2(b), Rule XXIII, Implementing Rules of Book V of the Labor Code, and now in Sec. 2(d)(ii), Rule I, Implementing Rules of Books VI of the Labor Code, do not go beyond the terms and provisions of the Labor Code. The Implementing Rules merely encapsulates a vague concept into a concrete idea. In what forum can an employer provide employees with an ample opportunity to be heard and defend themselves with the assistance of a representative? This situation can only take place in a formal hearing or conference which the Implementing Rules provides. The employees may only be fully afforded a chance to respond to the charges made against them, present their evidence, or rebut the evidence presented against them in a formal hearing or conference. Therefore, in my humble opinion, there is no discrepancy between the law and the rules implementing the Labor Code.

(5) In addition, the hearing or conference requirement in termination cases finds support in the long standing jurisprudence in Ang Tibay v. Court of Industrial Relations, wherein we declared that the right to a hearing is one of the cardinal primary rights[4] which must be respected even in cases of administrative character. We held:

> There are cardinal rights which must be respected even in proceedings of this character. The first of these rights is the right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof. Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal must consider the evidence presented.

This Court has recognized even the right of students to a summary proceeding, in which (a) the students must be informed in writing of the nature and cause of any accusation against them; (b) they shall have the right to answer the charges against them, with the assistance of counsel, if they so desire; (c) they shall be informed of the evidence against them; (d) they shall have the right to adduce evidence in their own behalf; and (e) the evidence must be duly considered by the investigating committee or official designated by the school authorities to hear and decide the case.[5]

If administrative cases recognized that the right to a hearing is a "cardinal primary right" and students are afforded the opportunity to defend themselves by allowing them to answer the charges through their counsel and by adducing their evidence to rebut the charges, what more for employees or laborers in the private sector who are specifically protected by the Constitution's social justice provision? It would be unjust to the laborers if they are not afforded the same chance given to students or even to employees in administrative cases.

(6) Removing the right of employees to a hearing prior to termination would deprive them the opportunity to adduce their evidence. Notice can be taken of the limited opportunity given to the employees by the directive in

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the first written notice that embodies the charges. More often than not, the directive is only for the employees to explain their side without affording them the right to present evidence. Furthermore, a hearing gives employees the chance to hire the services of counsel whose presence is beneficial to employees during hearings because the counsel knows the intricacies of the law and the strategies to defend the client--something with which a lay person is most assuredly not familiar. A mere first notice is not sufficient enough for employees to assemble evidence for their defense. Most often, the first notice merely serves as or is limited to a general notice which cites the company rules that were allegedly violated by the employees without explaining in detail the facts and circumstances pertinent to the charges and without attaching the pieces of evidence supporting the same. Lastly, the holding of an actual hearing will prevent the railroading of dismissal of employees as the employers are obliged to present convincing evidence to support the charges. All in all, the advantages far outweigh the disadvantages in holding an actual hearing.

(7) The indispensability of a hearing is advantageous to both the employer and the employee because they are given the opportunity to settle the dispute or resort to the use of alternative dispute resolution to deflect the filing of cases with the NLRC and later the courts. It is important that a hearing is prescribed by the law since this is the best time that the possibility of a compromise agreement or a settlement can be exhaustively discussed and entered into. During this hearing, the relations of the parties may not be that strained and, therefore, they are more likely receptive to a compromise. Once dismissal is ordered by the employer, the deteriorated relationship renders the possibility of an amicable settlement almost nil. Thus, a hearing can help the parties come up with a settlement that will benefit them and encourage an out-of-court settlement which would be less expensive, creating a "win-win" situation for them. Of course the compromise agreement, as a product of the settlement, should be subscribed and sworn to before the labor official or arbiter.

(8) Recent holdings of this Court have explained the propriety and necessity of an actual hearing or conference before an employee is dismissed. In King of Kings Transport, Inc. v. Mamac,[6] reiterated in R.B. Michael Press v. Galit,[7] we explained that the requirement of a hearing or conference is a necessary and indispensable element of procedural due process in the termination of employees, thus:

> To clarify, the following should be considered in terminating the services of employees:
>
> (1) The first written notice to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.
>
> (2) After serving the first notice, the employers should schedule and conduct a hearing or conference wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.

> (3) After determining that termination of employment is justified, the employers shall serve the employees a written notice of termination indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.[8]

(9) Lastly, a liberal interpretation of Art. 277(b) of the Labor Code would be in keeping with Art. XIII of the Constitution which dictates the promotion of social justice and ordains full protection to labor. The basic tenet of social justice is that "those who have less in life must have more in law." Social justice commands the protection by the State of the needy and the less fortunate members of society. This command becomes all the more firm in labor cases where security of tenure is also an issue. In Rance v. NLRC, we declared that:

> It is the policy of the state to assure the right of workers to "security of tenure" (Article XIII, Sec. 3 of the New Constitution, Section 9, Article II of the 1973 Constitution). The guarantee is an act of social justice. When a person has no property, his job may possibly be his only possession or means of livelihood. Therefore, he should be protected against any arbitrary deprivation of his job. Article 280 of the Labor Code has construed security of tenure as meaning that "the employer shall not terminate the services of an employee except for a just cause or when authorized by" the code (Bundoc v. People's Bank and Trust Company, 103 SCRA 599 [1981]). Dismissal is not justified for being arbitrary where the workers were denied due process (Reyes v. Philippine Duplicators, Inc., 109 SCRA 489 [1981]) and a clear denial of due process, or constitutional right must be safeguarded against at all times, (De Leon v. National Labor Relations Commission, 100 SCRA 691 [1980]).[9]

Between an employer and an employee, the latter is oftentimes on the losing or inferior position. Without the mandatory requirement of a hearing, employees may be unjustly terminated from their work, effectively losing their means of livelihood. The right of persons to their work is considered a property right which is well within the meaning of the constitutional guarantee.[10] Depriving employees their job without due process essentially amounts to a deprivation of property without due process.

We have applied social justice even to cases of just dismissal to grant equitable relief to laborers who were validly dismissed. We also termed social justice as "compassionate" justice.[11] Thus, the State should always show compassion and afford protection to those who are in most need--the laborers. Knowing that poverty and gross inequality are among the major problems of our country, then laws and procedures which have the aim of alleviating those problems should be liberally construed and interpreted in favor of the underprivileged. Thus, social legislations, such as the Labor Code, should be liberally construed to attain its laudable objectives.[12]

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[1] Now only Sec. 2(d)(ii), Rule I, Implementing Rules of Book VI of the Labor Code remains, as amended by Department Order No. 40-03, Series of 2003.

[2] WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED 74 (1993).

[3] G.R. No. 116588, January 24, 1996, 252 SCRA 314, 320-321.

[4] 69 Phil. 635, 641-644 (1940).

[5] Guzman v. National University, No. L-68288, July 11, 1986, 142 SCRA 699, 706-707.

[6] G.R. No. 166208, June 29, 2007, 526 SCRA 116.

[7] G.R. No. 153510, February 13, 2008, 545 SCRA 23.

[8] King of Kings Transport, Inc., supra at 125-126.

[9] No. L-68147, June 30, 1988, 163 SCRA 279, 284-285.

[10] Batangas Laguna Tayabas Bus Co. v. Court of Appeals, No. L-38482, June 18, 1976, 71 SCRA 470, 480.

[11] Tanala, supra note 3, at 320.

[12] Manahan v. Employees' Compensation Commission, No. L-44899, April 22, 1981, 104 SCRA 198, 202.

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