NEECO II, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (NLRC) AND EDUARDO CAIRLAN, RESPONDENTS.

G.R. NO. 157603. June 23, 2005

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

At bar is a petition for review challenging the Decision[1] dated 30 September 2002 of the Court of Appeals in CA-G.R. SP No. 66324 affirming the Resolution dated 31 August 2000 of the National Labor Relations Commission (NLRC), which denied petitioner's appeal and affirmed the Decision dated 26 September 1999 of the Labor Arbiter finding private respondent Eduardo Cairlan to have been illegally dismissed by petitioner. Impugned likewise is the Resolution[2] of the Court of Appeals dated 07 March 2003 denying petitioner's motion for reconsideration.

As succinctly narrated by the NLRC, based on the records of the case, the dispute surfaced under the following factual setting:

Petitioner Nueva Ecija Electric Cooperative (NEECO) II employed private respondent Eduardo M. Cairlan in 1978 as driver and was assigned at petitioner's Sub-Office at Quezon, Nueva Ecija.

On 15 January 1996, Danilo dela Cruz, petitioner's General Manager, terminated private respondent's services on ground of abandonment. Immediately thereafter, private respondent talked with Mr. dela Cruz regarding this matter and the latter promised him that the issue would be brought to the attention of NEECO's Board of Directors for appropriate action.[3] But nothing came out of Mr. dela Cruz's promise prompting private respondent to institute a Complaint for illegal dismissal with prayer for reinstatement and payment of backwages since the NEECO's Board of Directors did not act upon his termination.[4]

In its Position Paper[5] and Reply,[6] petitioner averred that the dismissal of private respondent was for a just cause and after due process. Petitioner added that private respondent was hired sometime in September 1981 with the latest position as driver assigned at Quezon, Nueva Ecija.[7] Petitioner staunchly asserted that since Danilo dela Cruz assumed his office as the new General Manager on 01 March 1995, the latter never saw private respondent report for work prompting the former to issue a memorandum dated 22 November 1995, which required private respondent to explain in writing why he was not reporting for duty. Private respondent was likewise directed in the said memo to report to its main office at Calipahan, Talavera, Nueva Ecija. For failure of the private respondent to comply with the said memorandum, Mr. dela Cruz directed a certain "Mr. Marcelo" to conduct an investigation on the whereabouts of the petitioner. It was then that NEECO II uncovered that private respondent was at that time already working with the Provincial Government of Nueva Ecija as driver allegedly under an assumed name of "Eduardo Caimay." For these reasons, petitioner contended that it was left with no other alternative but to terminate private respondent's services.[8]

In the hearing conducted on 04 August 1999 before the Labor Arbiter, the Minutes/Constancia required petitioner to file its pleading within 15 days from said date after which the case is deemed submitted for evaluation.[9]

On 27 August 1999, petitioner filed a motion to set case for trial on the merits. However, the presiding Labor Arbiter Florentino R. Darlucio arrived at the decision after an evaluation of the evidence on record that there was no necessity to conduct trial on the merits inasmuch as a just and fair decision can be arrived at based on the pleadings. Hence, petitioner's motion to set case for trial was denied.[10]

On 26 September 1999, the Labor Arbiter rendered a Decision declaring that private respondent was illegally dismissed on the following grounds: First, petitioner's assertion that it required private respondent to explain in writing why he was not reporting for duty as driver assigned at Quezon Service Center merited scant consideration since a copy of the alleged memorandum dated 22 November 1995, purportedly as its Annex "A," was nowhere to be found in the record of the case. Second, petitioner's contention that private respondent Cairlan was later discovered to be working with the Provincial Government of Nueva Ecija under an assumed name of Eduardo Caimay remained unsubstantiated as petitioner failed to adduce independent evidence that said "Eduardo Caimay" and private respondent Eduardo Cairlan are one and the same person. Third, the Labor Arbiter held that the private respondent was denied his right to due process since the letter of termination dated 15 January 1996 stated that said termination is retroactively effected on 1 January 1996. Finally, according to the Labor Arbiter, petitioner failed to corroborate its claim that private respondent was guilty of dereliction of duty.[11]

The dispositive portion of the Labor Arbiter's Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered declaring the dismissal of the complainant illegal. Respondent is hereby ordered to reinstate complainant to his former position and to pay his backwages (amounting to P220,000.00 at the promulgation of the decision until actual reinstatement).[12]

On 12 November 1999, petitioner filed its Appeal Memorandum, which public respondent NLRC dismissed for lack of merit. The NLRC affirmed in toto the decision of Labor Arbiter Florentino R. Darlucio, in its Resolution[13] dated 31 August 2000. Petitioner's Motion for Reconsideration was met with equal lack of success in the NLRC's Resolution dated 31 May 2001.[14]

On appeal, the Court of Appeals[15] upheld the decisions of the NLRC and the Labor Arbiter in the now assailed Decision dated 30 September 2002. It held:

> WHEREFORE, the instant petition is hereby DENIED. As a legal consequence, the assailed Decision of Labor Arbiter Florentino R. Darlucio, dated 26 September 1999; Decision on Appeal of public respondent National Labor Relations Commission's (sic), dated 31 August 2000, denying petitioners' appeal; and Resolution of public respondent NLRC, dated 31 May 2001, denying petitioners' Motion for Reconsideration, are AFFIRMED. Costs against petitioner.[16]

Its motion for reconsideration having been denied by the Court of Appeals in a Resolution[17] dated 07 March 2003, petitioner now lays its appeal before this Court via a petition for review where it assigns the following errors to the Court of Appeals, viz:

> I. THE HONORABLE COURT OF APPEALS COMMITTED GRAVE AND PATENT ERROR IN UPHOLDING THE RULING OF THE PUBLIC RESPONDENT DESPITE THE FACT THAT THE LABOR ARBITER DECIDED THE CASE WITHOUT ISSUING AN ORDER SUBMITTING THE CASE FOR RESOLUTION AND IN DENYING THE PETITIONER'S MOTION TO SET THE CASE FOR TRIAL ON THE MERITS IN THE SAME DECISION.
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> II. THE HONORABLE COURT OF APPEALS COMMITTED GRAVE AND PATENT ERROR IN UPHOLDING THE RULING OF THE PUBLIC RESPONDENT DESPITE THE FACT THAT THE LABOR ARBITER COMMITTED SERIOUS ERRORS IN THE FINDINGS OF FACTS WHICH IF NOT CORRECTED WOULD CAUSE GRAVE AND IRREPARABLE DAMAGE OR INJURY TO THE

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> PETITIONER.
>
> III. THE HONORABLE COURT OF APPEALS COMMITTED GRAVE AND PATENT ERROR IN UPHOLDING THE RULING OF THE PUBLIC RESPONDENT, DESPITE THE FACT THAT THE LABOR ARBITER COMMITTED GRAVE ERROR IN FINDING THE DISMISSAL OF THE PRIVATE RESPONDENT AS ILLEGAL.[18]

Cutting through the verbiage, the issues in this case are: (1) whether or not petitioner was accorded due process; and (2) whether or not petitioner is guilty of illegally dismissing private respondent.

A critical point of contention made by the petitioner is whether or not it was accorded due process in the proceedings before the Labor Arbiter. Petitioner assiduously argues that it was treated unfairly by the Labor Arbiter when the latter proceeded to decide the case on the sole basis of the pleadings filed by the parties, despite the factual nature of the issues raised, which according to petitioner demands a full-dress trial.

This contention must fail.

Article 221 of the Labor Code, as amended by Section 11 of Republic Act No. 6715, or the so-called "Herrera-Veloso Amendments," which took effect on 21 March 1989, amending several provisions of the Labor Code, including the respective jurisdictions of the Labor Arbiter, the NLRC and the voluntary arbitrator, provides in part:

> Technical rules not binding and prior resort to amicable settlement. - In any proceeding before the Commission or any of the Labor Arbiters, the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Code that the Commission and its members and the Labor Arbiters shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process. In any proceeding before the Commission or any Labor Arbiter, the parties may be represented by legal counsel but it shall be the duty of the Chairman, any Presiding Commissioner or Commissioner or any Labor Arbiter to exercise complete control of the proceedings at all stages.

Correlatively, Section 4, Rule V of the New Rules of Procedure of the NLRC, which the Labor Arbiter cited in his Decision, provides:

> Determination of Necessity of Hearing. – Immediately after the submission by the parties of their position papers/memorandum, the Labor Arbiter shall motu proprio determine whether there is need for a formal trial or hearing. At this stage, he may, at his discretion and for the purpose of making such determination, ask clarificatory questions to further elicit facts or information, including but not limited to the subpoena of relevant documentary evidence, if any from any party or witness.

Under the said Rule, the Labor Arbiter is given the latitude to determine the necessity for a formal hearing or investigation, once the position papers and other documentary evidence of the parties have been submitted before him. The parties may ask for a hearing but such hearing is not a matter of right of the parties. The Labor Arbiter, in the exercise of his discretion, may deny such request and proceed to decide the case on the basis of the position papers and other documents brought before him without resorting to technical rules of evidence as observed in regular courts of justice. The requirement of due process in labor cases before a Labor Arbiter is satisfied when the parties are given the opportunity to submit their position papers to which they are supposed to attach all the supporting documents or documentary evidence that would prove their respective claims, in the event the Labor Arbiter determines that no formal hearing would be conducted or that such hearing was not necessary.[19]

In the present case, a scrupulous study of the records reveals that the Labor Arbiter did not abuse his discretion conferred upon him by the Rules in not conducting a formal hearing. On this, the findings of the Court of

Appeals, consistent with that of the NLRC and the Labor Arbiter, ought to be sustained. Thus-

> Moreover, Section 4, Rule V of the New Rules of Procedure of the NLRC vests upon the labor arbiter the discretion to determine the need for a formal trial of hearing. He may, at his discretion, merely require the parties to submit their respective position papers/memoranda and decide on the basis thereof. In the instant case, the labor arbiter not only called for hearings, but also required both parties to submit their position papers as well as their respective replies. It will be recalled, that private respondents were even given 15 days to file any pleading, however, it tardily filed its motion to set case for hearing on 27 August 1999. Petitioner cannot now be allowed to claim denial of due process when it was they who were less than vigilant of their rights. The case was deemed submitted for resolution, as the petitioner failed to timely file its motion to set the case for hearing. Moreover, labor arbiter did not find it necessary to conduct a trial–type hearing.[20]

Jurisprudential 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 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.[21]

At any rate, the records show that petitioner was given additional opportunity to argue its case on appeal before public respondent NLRC. Despite the fact that petitioner later appended the purported notice memorandum in its memorandum of appeal filed with the NLRC, the NLRC was not swayed by it. Neither was the Court of Appeals; nor are we. Such appeals to the NLRC, to the Court of Appeals, and now before us, have afforded the petitioner more than sufficient opportunity to be heard. Procedural flaws that may have marred the proceedings before the Labor Arbiter, although there is none in this case, should be deemed rectified in the subsequent proceedings in the NLRC, to the Court of Appeals, and before this Court.

The Court shall not fake naiveté of the prevalent practice among lawyers who, for lack of better argument to bolster their position, engage in waxing lyrical to “a denial of due process.” As a former member of this Court noted, some lawyers who, lacking plausible support for their position, simply claim a denial of due process as if it were a universal absolution. The ground will prove unavailing, and not surprisingly, since it is virtually only a pro forma argument.[22] Due process is not to be bandied like a slogan. It is not a mere catch phrase. As the highest hallmark of the free society, its name should not be invoked in vain but only when justice has not been truly served.[23]

Petitioner’s avowal that the findings of facts of the Labor Arbiter are patently erroneous, specifically his conclusion that private respondent was not properly apprised of the cause for his dismissal, in our view, lacks sufficient basis in law and in fact.

To effectuate a valid dismissal of an employee, the law requires not only the existence of a just and valid cause but also enjoins the employer to give the employee the opportunity to be heard and to defend himself.[24] Procedurally, if the dismissal is based on a just cause under Article 282 of the Labor Code, the employer must give the employee two written notices and a hearing or opportunity to be heard is requested by the employee before terminating the employment: a notice specifying the grounds for which dismissal is sought, a hearing or an opportunity to be heard, and after hearing or opportunity to be heard, a notice of the decision to dismiss. [25]

Before the Labor Arbiter, petitioner’s sole basis in claiming that it had required private respondent to explain in writing why he was not reporting for duty was a memorandum dated 22 November 1995, which, however, was not found in the records. That petitioner later attached the alleged memo[26] in its appeal memorandum filed with the NLRC does not cure the fact that it was not among those annexed to the petitioner’s pleadings filed with the Labor Arbiter. Too, from the face of the memorandum appears the written notation: “Refuse (sic) to receive on 30 November 1995.”[27] That private respondent refused to receive the memorandum is to us, too self-serving a

claim on the part of petitioner in the absence of any showing of the signature or initial of the proper serving officer. Moreover, petitioner could have easily remedied the situation by the expediency of sending the memorandum to private respondent by registered mail at his last known address as usually contained in the Personal Data Sheet or any personal file containing his last known address.

As correctly observed by the Court of Appeals sustaining the findings of the Labor Arbiter, as well as the NLRC, even assuming that indeed petitioner was able to send a notice to private respondent to accord him opportunity to be heard before he was dismissed, the same would not obliterate the fact that petitioner miserably failed to establish the fact of abandonment to justify private respondent's dismissal.

Abandonment is the deliberate and unjustified refusal of an employee to resume his employment; it is a form of neglect of duty;[28] hence, a just cause for termination of employment by the employer under Article 282 of the Labor Code, which enumerates the just causes for termination by the employer: i.e., (a) serious misconduct or wilful disobedience by the employee of the lawful orders of his employer or the latter's representative in connection with the employee's work; (b) gross and habitual neglect by the employee of his duties; (c) fraud or wilful breach by the employee of the trust reposed in him by his employer or his duly authorized representative; (d) commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and (e) other analogous causes.

The Court is not inclined to disturb the findings of the Court of Appeals, affirming those of the Labor Arbiter and the NLRC, that private respondent did not abandon his job. As adroitly elucidated by the Court of Appeals -

> Private respondent's alleged abandonment of work through his employment with the Provincial Government of Nueva Ecija was not clearly established and proven. The evidence submitted by petitioner to buttress its allegation that private respondent abandoned his work consists merely of indexes of payments to employees under the name Eduardo Caimay without any further evidence showing that Eduardo Caimay and private respondent Eduardo Cairlan is one and the same person. The best evidence that could have established the allegation that Eduardo Caimay and private respondent Eduardo Cairlan is one and the same person is Eduardo Caimay's Personal Data Sheet which definitely would have the pertinent personal information about him and a picture that would identify him and not a testimony of a representative from the Provincial Government of Nueva Ecija, as adverted to by petitioner to justify its motion for a trial type hearing.
>
> . . . Worse, private respondent received his notice of termination only on 15 January 1996 which termination is effective as early as 01 January 1996, all in gross violation of the requirements provided for by law.[29] (Emphases supplied)

Adding to the dubiety of petitioner's assertion that private respondent is already employed with the Provincial Government of Nueva Ecija, is the fact that petitioner did not even bother to attach an affidavit of the person, a certain "Mr. Marcelo," whom Mr. dela Cruz allegedly ordered to conduct an investigation on the whereabouts of the private respondent and who purportedly unearthed that private respondent was at that time already working with the Provincial Government of Nueva Ecija as driver under an assumed name of "Eduardo Caimay." On the basis of the evidence provided by petitioner, such contention remains nothing but a naked and self-serving claim; thus, undeserving of any credence.

Further negating petitioner's contention of abandonment, as noted by the Labor Arbiter, is private respondent's letter dated 04 March 1996 addressed to Mr. Danilo dela Cruz reiterating the former's plea for reconsideration of his dismissal. Said letter reads:

> Marso 4, 1996
>
> G. DANILO P. DELA CRUZ

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> Pangkalahatang Tagapamahala
> Nueva Ecija Electric Coop. II
> Talavera, Nueva Ecija
>
> Mahal na Ginoo:
>
> Ito po ay may kinalaman sa akin pong pagnanais na maipagpatuloy ang aking paglilingkod bilang kawani ng inyong Kooperatiba na napagalaman kong kasalukuyang pinag-uusapan ng Lupon ng mga Patnugot ng NEECO II.
>
> Kung sakasakali po na ang aking kahilingan ay hindi mapaunlakan ay marapatin po sana na makolekta ko ang aking mga benepisyo bilang kawani ng NEECO sa kapakanan at kapakinabangan ng aking pamilya na umaasa sa inyong makatao at makatarungang pagpapasiya ukol sa bagay na ito.
>
> Marami pong salamat sa inyong pagbibigay pansin at pagsasaalang-alang sa bagay na ito.
>
> Lubos na gumagalang,
>
> EDUARDO M. CAIRLAN (Sgd.)[30]

This letter depicts private respondent's fervor and yearning to continue working with petitioner – the very antithesis of abandonment.

Absent any showing that the Labor Arbiter, the NLRC or the Court of Appeals gravely abused its discretion or otherwise acted without jurisdiction or in excess of the same,[31] this Court is bound by its findings of facts. Indeed, the records reveal that the questioned decision is duly supported by evidence.[32] Findings of facts of quasi-judicial agencies like the NLRC are accorded by this Court not only with respect but even finality if they are supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. This quantum of proof has been satisfied in this case. These are, on the main, factual findings over which the Labor Arbiter and the NLRC are most equipped to determine having acquired expertise in the specific matters entrusted to their jurisdiction.[33]

Hence, as did the Labor Arbiter, the NLRC, and the Court of Appeals, after careful weighing of the arguments of both parties and a conscientious evaluation of the records, we find wanting in the case under consideration cogent evidence of abandonment to warrant such a harsh and drastic action as private respondent's severance of his economic means. Where the dismissal is without just or authorized cause and there was no due process, Article 279 of the Labor Code 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.[34]

WHEREFORE, the instant petition is hereby DENIED and the Decision dated 30 September 2002 and the Resolution dated 07 March 2003 of the Court of Appeals are hereby AFFIRMED with modifications that there shall be no loss of seniority rights and other privileges and that the backwages shall include allowances and other benefits or their monetary equivalent.

Costs against petitioner.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

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[1] Rollo, pp. 106-113. Penned by Associate Justice Teodoro P. Regino with Associate Justices Eloy R. Bello, Jr.

and Sergio L. Pestaño concurring.

[2] Rollo, p. 119.

[3] Rollo, p. 73.

[4] Rollo, p. 73.

[5] Rollo, pp. 33-36.

[6] Rollo, pp. 47-49.

[7] Rollo, p. 73.

[8] Rollo, p. 73.

[9] Rollo, p. 73.

[10] Rollo, p. 73; pp. 53-54.

[11] Rollo, p. 74.

[12] Rollo, p. 59.

[13] Rollo, pp. 72-77.

[14] Rollo, pp. 84-85.

[15] Rollo, pp. 43-48.

[16] Rollo, pp. 46-47.

[17] Rollo, pp. 53-54.

[18] Rollo, p. 15.

[19] Mariveles Shipyard Corp. v. Court of Appeals, G.R. No. 144134, 11 November 2003, 415 SCRA 573.

[20] Rollo, pp. 110-111.

[21] Philippine Airlines, Inc. v. NLRC (4th Division), G.R. No. 115785, 04 August 2000, 337 SCRA 286.

[22] See dissenting opinion of Hermosisima, Jr., J. in Manila Banking Corporation ("Manilabank") v. NLRC, G.R. No. 107487, 29 September 1997, 279 SCRA 602. See also Pacific Timber Export Corp. v. NLRC, G.R. No. 106170, 30 July 1993, 224 SCRA 860, 864, citing T.H. Valderama & Sons, Inc. v. Drilon, G.R. No. 78212, 22 January 1990, 181 SCRA 308; PNOC-Energy Development Corp. v. NLRC, G.R. No. 79182, 11 September 1991, 201 SCRA 487; Manila Resources Development Corporation v. NLRC, G.R. No. 75242, 02 September 1992, 213 SCRA 296.

[23] Id.

[24] Agabon v. NLRC, G.R. No. 158693, 17 November 2004, p. 4, citing Santos v. San Miguel Corporation, G.R. No. 149416, 14 March 2003, 399 SCRA 172, 182.

[25] Id. See also Book VI, Rule I, Section 2(d) of the Omnibus Rules Implementing the Labor Code.

[26] Rollo, p. 71.

[27] Rollo, p. 71.

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[28] Agabon v. NLRC, supra, note 23.

[29] Rollo, p. 112.

[30] Rollo, p. 58.

[31] Wyeth-Suaco Laboratories, Inc. v. National Labor Relations Commission, G.R. No. 100658, 02 March 1993, 219 SCRA 356.

[32] Asia Brewery, Inc. v. NLRC, G.R. No. 110241, 24 July 1996, 259 SCRA 185.

[33] Zarate, Jr. v. Olegario, G.R. No. 90655, 7 October 1996, 263 SCRA 1.

[34] Agabon v. NLRC, supra, note 23.

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