

ELSIE T. LAVADOR, PETITIONER, VS. “J” MARKETING CORPORATION AND ROGELIO U. SOYAO, RESPONDENTS.

G.R. NO. 157757. June 28, 2005

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

For resolution is the petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision[1] dated November 26, 2001 and the Resolution[2] dated February 19, 2003 rendered by the Court of Appeals in CA-G.R. SP No. 66248, entitled “Elsie T. Lavador vs. National Labor Relations Commission (Fifth Division), J Marketing Corporation and/or Rogelio U. Soyao.”

Records show that on January 7, 1991, Elsie T. Lavador, petitioner, was employed by “J” Marketing Corporation, respondent, as a daily paid worker. Eventually, she was promoted as assistant cashier in respondent’s branch office at Butuan City, receiving a monthly salary of P3,834.00.

Claiming that respondent failed to remit the P1,000.00 payment of Robert Braza; to issue official receipt for the P1,259.00 check payment of Chelito M. Delliva; and to apply the same to his account, respondent issued inter-office memoranda dated June 9, 1999 and August 23, 1999 charging petitioner with misappropriation and directing her to submit a written explanation. In the meantime, respondent reassigned her as receptionist.

On September 1, 1999, after evaluating the evidence against petitioner, respondent issued a notice terminating her services for loss of trust and confidence.

Immediately, she filed with the Office of the Labor Arbiter a complaint for illegal dismissal against respondent and Rogelio U. Soyao, its Executive Vice President and General Manager.

After the submission of the parties’ pleadings and position papers, the Labor Arbiter rendered a Decision dated December 31, 1999 finding that petitioner was not illegally dismissed from the service but ordering respondents to pay her P12,392.73 as salary differential and P1,239.27 attorney’s fees.

Upon appeal, the National Labor Relations Commission (NLRC) rendered a Decision dated April 17, 2001 affirming with modification the Decision of the Labor Arbiter in the sense that the award of salary differential and attorney’s fee is deleted.

Petitioner then filed a motion for reconsideration but was denied by the NLRC in a Resolution dated May 18, 2001, prompting her to file with the Court of Appeals a petition for certiorari, docketed as CA-G.R. SP No. 66248.

On November 26, 2001, the Appellate Court rendered a Decision affirming with modification the assailed NLRC Decision. While the said court upheld the termination of petitioner’s employment, however, it ordered respondents to pay her P10,000.00 as damages for violating her right to due process, thus:

“The records disclose that petitioner twice requested that a formal administrative investigation be conducted in

order for her to properly defend herself from the accusations leveled against her. Despite her pleas and that of her counsel, private respondents refused to conduct a formal administrative investigation, proceeding instead to hastily dismiss petitioner on the basis of its own probe, including the letter-explanation of petitioner. While due process connotes merely the opportunity to be heard, We cannot agree that the said principle was complied with in the present case as compliance therewith appears to be merely superficial. The fact that the supposed clients-complainants of private respondents executed conflicting statements on the matter, the latter should have granted the request of petitioner in order to ferret out the truth.

x x x x x

Perforce, private respondent corporation is hereby ordered to pay the latter indemnity for damages in the amount of P10,000.00 in accordance with the ruling of the High Court in the cases of Wenphil Corporation vs. NLRC (170 SCRA 69), Reta vs. NLRC (232 SCRA 613) and Better Buildings, Inc. vs. NLRC (283 SCRA 242).

WHEREFORE, premises considered, the present petition is hereby PARTIALLY GRANTED. The Resolutions dated April 17, 2001 and May 18, 2001 issued by public respondent National Labor Relations Commission in NLRC CA No. M-005395-2000 (RAB 13-09-00138-99) are hereby AFFIRMED with MODIFICATION in that respondent corporation is hereby ordered to pay petitioner indemnity for damages in the amount of P10,000.00 for violating here right to due process of law.

No pronouncement as to costs.

SO ORDERED.”

On December 12, 2001, petitioner filed a motion for reconsideration, but was denied by the Appellate Court in a Resolution dated February 19, 2003.

Hence, this petition for review on certiorari.

The basic issue here is whether petitioner was deprived of her right to due process.

Section 2, Rule XXIII, Book V of the Implementing Rules of the Labor Code provides:

“RULE XXIII

TERMINATION OF EMPLOYMENT

x x x

SEC. 2. Standards of due process; requirements of notice. – In all cases of termination of employment, the following standards of due process shall be substantially observed:

I. For termination of employment based on just causes as defined in Article 282 of the Code:

(a) A written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side;

(b) A hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and

(c) 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 case of termination, the foregoing notices shall be served on the employee’s last known address.

x x x.”

In *Santos vs. San Miguel Corporation*,^[3] we reiterated the well-entrenched rule that “(p)rocedural due process requires the employer to give the employee two notices. First is the notice apprising him of the particular acts or omissions for which his dismissal is sought. Second is the subsequent notice informing him of the employer’s decision to dismiss him.”

In *Homeowners Savings and Loan Association, Inc. vs. NLRC*,^[4] we ruled:

“Actual adversarial proceeding becomes necessary only for clarification or when there is a need to propound searching questions to unclear witnesses. This is a procedural right which the employee must, however, ask for. It is not an inherent right.”

It bears stressing that petitioner requested that an investigation be conducted but respondents vehemently refused. Clearly, petitioner was deprived of her right to due process.

On this point, our ruling in *Agabon vs. National Labor Relations Commission*,^[5] is relevant, thus:

“Procedurally, (1) if the dismissal is based on a just cause under Article 282, the employer must give the employee two written notices and a hearing or opportunity to be heard if 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; x x x.

From the foregoing rules four possible situations may be derived: (1) the dismissal is for a just cause under Article 282 of the Labor Code, for an authorized cause under Article 283, or for health reasons under Article 284, and due process was observed; (2) the dismissal is without just or authorized cause but due process was observed; (3) the dismissal is without just or authorized cause and there was no due process; and (4) the dismissal is for just or authorized cause but due process was not observed. (emphasis supplied).

x x x x x

In the fourth situation, the dismissal should be upheld. While the procedural infirmity cannot be cured, it should not invalidate the dismissal. However, employer should be held liable for non-compliance with the procedural requirements of due process.

x x x x x

The violation of the petitioners’ right to statutory due process by the private respondent warrants the payment of indemnity in the form of nominal damages. The amount of such damages is addressed to the sound discretion of the court, taking into account the relevant circumstances. Considering the prevailing circumstances in the case at bar, we deem it proper to fix it at P30,000.00. We believe this form of damages would serve to deter employers from future violations of the statutory due process rights of employees. At the very least, it provides a vindication or recognition of this fundamental right granted to the latter under the Labor Code and its Implementing Rules.”

In this case, the dismissal of petitioner from the service is due to dishonesty or a just cause. But due process was not observed as no hearing was conducted despite her request. Thus, respondents should be held liable for violation of her right to due process and should pay her indemnity in the form of nominal damages, pursuant to our ruling in *Agabon*, which we fix at P20,000.00.^[6]

WHEREFORE, the petition is GRANTED. The assailed Decision dated November 26, 2001 and Resolution dated February 19, 2003 of the Court of Appeals in CA-G.R. SP No. 66248 are hereby AFFIRMED with MODIFICATION in the sense that respondents are hereby ordered to pay petitioner P20,000.00 as nominal damages. No costs.

SO ORDERED.

Corona, and Garcia, JJ., concur.

Panganiban, (Chairman), J., reiterates his dissent in *Agabon v. NLRC & Serrano v. NLRC* that a violation of due process should be sanctioned by reinstatement and back wages, not merely nominal damages.

Carpio-Morales, J., no part.

[1] Penned by Justice Martin S. Villarama, Jr., and concurred in by Justice Conchita Carpio Morales, now a member of this Court, and Justice Sergio L. Pestaño. Annex “A”, Petition for Review, Rollo at 14-23.

[2] Annex “B”, Ibid, Rollo at 24-25.

[3] G.R. No. 149416, March 14, 2003, 399 SCRA 172, 185, cited in *Millares vs. Philippine Long Distance Telephone Co., Inc.*, G.R. No. 154078, May 6, 2005 at 10.

[4] G.R. No. 97067, September 26, 1996, 262 SCRA 406, 422-423, citing *Manggagawa ng Komunikasyon sa Pilipinas vs. NLRC and PLDT*, 206 SCRA 109, 114-115 (1992) and *De Leon vs. NLRC*, 100 SCRA 691 (1980).

[5] G.R. No. 158693, November 17, 2004, 442 SCRA 573, 608, 617.

[6] The ponente, although maintaining her dissent, submits to the ruling of the majority in *Agabon* that violation by the employer of the employee’s right to due process warrants the payment of nominal damages by the former.

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