

NELSON ZAGALA AND FELICIANO M. ANGELES, PETITIONERS, VS. MIKADO PHILIPPINES CORPORATION, YOSHINARI KONO AND TAKEHIKO OGURA, RESPONDENTS.

G.R. NO. 160863. September 27, 2006

Ponente: AUSTRIA-MARTINEZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-160863/>

AUSTRIA-MARTINEZ, J.:

Before this Court is a petition for review seeking the reversal of the Decision[1] dated August 27, 2003 of the Court of Appeals (CA) in CA-G.R. SP No. 70416 and its Resolution[2] dated November 17, 2003, denying petitioners' Motion for Reconsideration.

The facts are as follows:

Petitioners Feliciano Angeles (Angeles) and Nelson Zagala (Zagala) were hired as laborers by Mikado Philippines Corporation (Mikado) on February 1, 1991 and February 19, 1990, respectively.[3] In January of 1998, the management of Mikado reviewed the employees' attendance records for the years 1995, 1996, and 1997 and found that Angeles and Zagala were among those who exceeded the 30 absences allowed per year.[4] Zagala incurred a total of 40 absences in 1995, 34.5 in 1996, and 59.5 in 1997; while Angeles incurred a total of 32.5 absences in 1995, 35 in 1996 and 40 in 1997.[5]

Even before they received a formal memo asking for their explanations, petitioners submitted letters to the executive committee of Mikado giving reasons for their absences.[6] Angeles, in his letter dated January 17, 1998 stated that he incurred absences in 1997 due to viral influenza, confinement of his daughter in the hospital, mental illness of their maid and other family problems.[7] Zagala, meanwhile, averred in his January 19, 1998 letter that he and his family incurred ailments and problems that needed his attention.[8]

Finding said explanations to be unsatisfactory, Mikado terminated the services of petitioners on March 1, 1998.[9]

The following day, Angeles and Zagala filed a complaint for illegal dismissal against Mikado and its President, Yoshinara[10] Kono, and Executive Vice-President, Takehiko Ogura.[11]

On October 28, 1999, the Labor Arbiter (LA) rendered a decision

ordering respondents to reinstate herein petitioners to their former positions and to pay them full backwages thus:

WHEREFORE, premises considered, judgment is hereby rendered ordering respondent to reinstate complainant to their former position and to pay them full backwages computed as follows:

FELICIANO M. ANGELES

Backwages:

From March 3 to Oct. 29, 1999

= 7 mos. & 28 days of 7.93 x P6,283.00

=

P49, 824.19

13th Month Pay:

1998 = P49,824.10/12

=

P 4,152.02

Service Incentive Lave:

1998 = P241.65 x 5 = P1,208.25

1999 = P241.65 x 5 = P1,208.25

=

P 2,416.50

TOTAL

=

P56,392.71

NELSON A. ZAGALA

Backwages:

From March 1, 1998 to Oct. 29, 1999

= 7.93 x P6,948.00

=

P55,097.64

13th Month Pay:

1998 = P55,097.64/12

=

P 4,591.71

Service Incentive Lave:

1998 = P267.23 x 5 = P1,336.15

1999 = P267.23 x 5 = P1,336.15

=

P 2,672.30

TOTAL

=

P62,361.41

GRAND TOTAL

=

P118,754.12

SO ORDERED.[12]

The LA found that petitioners already received sanction for their absences in 1995 and 1996, through a memorandum with warning, thus petitioners may no longer be dismissed for the same cause.[13] He also issued a writ of execution dated December 9, 1999 which respondents, however, did not heed.[14]

Respondents appealed to the National Labor Relations Commission (NLRC) which rendered a Resolution[15] on February 26, 2002 affirming in toto the decision of the Labor Arbiter.[16] It held that "warning" may be considered as penalty just like a reprimand; the subject absences were all properly brought to the attention of and was approved by the management; the termination of petitioners on the ground of absenteeism is not morally sound considering the rigorous stamina needed and the risk involved in the manufacture of marine propellers, and in view of petitioners' exemplary performance in their work.[17]

Respondents brought a petition to the CA under Rule 65 of the Rules of Court alleging that the NLRC committed grave abuse of discretion: in finding that the termination of petitioners due to absenteeism is not morally sound nor a valid cause for dismissal; in committing serious mistake in applying the laws and jurisprudence; and in not finding absenteeism as a just and lawful cause for the termination of petitioners.[18]

Meanwhile, petitioners filed before the LA a Motion for Recomputation and Issuance of Alias Writ of Execution[19] which was granted by the LA on November 15, 2002.[20] On November 25, 2002, the LA issued an Alias Writ of Execution ordering the sheriffs of the NLRC to effect the reinstatement of petitioners with Mikado and to collect from respondents the total amount of P659,426.07, representing petitioners' monetary award of P118,754.12 as embodied in the LA Decision of October 28, 1999, petitioners' accrued salaries of P534,638.03 for the period of October 30, 1999 to October 30, 2002, and execution fees of P6,033.92.[21]

Thus, the NLRC Sheriff issued a Notice of Garnishment dated December 9, 2002 on the Manager of the Rizal Commercial Banking Corporation EPZA, Rosario Cavite Branch anent the account of Mikado up to the amount of P659, 426.07.[22]

On August 27, 2003, the CA rendered its Decision reversing the NLRC, the dispositive portion of which reads:

WHEREFORE, the instant petition is hereby GRANTED. Accordingly, the assailed Resolution is hereby REVERSED and SET ASIDE. Also, the Writ of Garnishment dated December 9, 2002 on the account of petitioners with RCBC, Rosario Branch is hereby lifted. No pronouncement as to cost.[23]

The CA held that Mikado was correct in contending that absenteeism is a valid cause for termination following Art. 282(c) of the Labor Code which provides that gross and habitual neglect by the employee of his duties is a just cause for termination; that both petitioners knew that the company policy was to allow only 30 absences; that although petitioners were previously warned for their absences in 1995 and 1996, still petitioners incurred absences in 1997 in violation of the company rules; and that previous offenses may be used as valid justification for dismissal from work where the infractions are related to the subsequent offense upon which the termination of employment is decreed.[24]

The CA denied petitioners' Motion for Reconsideration.[25]

Thus, the present petition where it is alleged that the CA erred:

- x x x IN HOLDING THAT PETITIONERS' INCURRED ABSENCES IS A JUST CAUSE FOR THEIR DISMISSAL DESPITE THE UNDISPUTED FINDING OF THE NATIONAL LABOR RELATIONS COMMISSION THAT PETITIONERS' ABSENCES WERE AUTHORIZED AND CONDONED BY THE RESPONDENTS. THIS RULING OF [SIC] NOT IN ACCORD WITH THE DECISIONS OF THIS MOST HONORABLE COURT.

- x x x IN REVERSING THE FINDING OF THE NATIONAL LABOR RELATIONS COMMISSION THAT THE PENALTY LESSER THAN TERMINATION IS THE PROPER PENALTY DESPITE UNDISPUTED EVIDENCE TO THAT EFFECT. THIS RULING IS CONTRARY TO EXISTING JURISPRUDENCE.

- x x x IN FINDING THAT THERE IS VALID CAUSE FOR DISMISSAL SINCE THE RESPONDENTS NEVER OVERCAME THEIR BURDEN OF PROOF.

- x x x IN LIFTING THE WRIT OF GARNISHMENT CONTRARY TO EXISTING LAWS AND DECISIONS OF THE SUPREME COURT.[26]

Petitioners claim that: their absences were authorized or at the very least condoned, as such absences were all properly brought to the attention of respondents through phone calls, doctor's certificates and signed leave forms; absences, once authorized or with prior approval of the employer, may not be used as ground for termination of employment; granting, without admitting, that the absences in this case were unauthorized, still a lesser penalty than termination would be proper; the company's Working Regulations, Section 6, Art. II thereof states that "unexcused absences are subject to progressive disciplinary actions"; the memorandum on Attendance Guidelines further enumerates the disciplinary actions for unexcused leave without pay, to wit: verbal warning for the first offense, written warning for the second offense, 3-day suspension for the third offense; 6-day suspension for the fourth offense and termination for the fifth offense; respondents did not follow the progressive disciplinary actions, for if the CA's conclusions were to be followed, i.e., petitioners' absences in 1997 constitute a second violation, then a written warning should be the appropriate penalty or a 3-day suspension at the most since this is the next level penalty; employers cannot apply penalties other than those provided in the company rules; respondents, as employers, have the burden of proving that the dismissal of petitioners was for a just cause and their failure to discharge such burden would result in a finding that the dismissal of the employees is wrongful; the petitioners are entitled to the salaries that they should have received had they been reinstated to their employment; granting that the CA were justified in its decision, they should not have lifted the order of garnishment issued by the Labor Arbiter, at least up to the amount equivalent to what the petitioners should have received from the date of the Labor Arbiter's decision up to the date that the CA reversed and set aside such finding since petitioners are entitled to said amount.[27]

Petitioners pray that the Decision and Resolution of the CA be set aside and that the Resolution of the NLRC and the Decision of the Labor Arbiter be affirmed.[28]

Respondents filed their Comment contending that: petitioners violated company rules and regulations for the years 1995, 1996, and 1997; the absences allegedly condoned or authorized pertains to the years 1995 and 1996; the reasons put forth by petitioners for their absences were personal problems; in *Meralco v. National Labor Relations Commission*, 263 SCRA 531, an employee who had a penchant to incur unauthorized absences and/or violation of the employer's sick leave policy was deemed properly dismissed considering that it is the totality, not the compartmentalization of company infractions that the employee has consistently committed, which justified his dismissal; the contention of petitioners that respondents failed to discharge the burden of proof is baseless;

there is also no merit to petitioners' claim that they are entitled to salaries which they should have received had they been reinstated since they are terminated for a just cause.[29]

Petitioners filed a Reply[30] and a Memorandum[31] reiterating their arguments in the petition.

Respondents likewise filed a Memorandum where they further argued that Mikado actually showed remarkable tolerance for the absenteeism of petitioners for instead of immediate termination or suspension, Mikado sent petitioners memoranda with warning; that it is a fundamental rule that an employer cannot be compelled to continue with the employment of an individual who admittedly was guilty of misfeasance or malfeasance towards his employer and whose continuance in the service is inimical to the employer's interest; and that the employees' right to security of tenure cannot defeat the fact that petitioners were extremely negligent in the performance of their duties.[32]

At the center of the present petition is the issue of whether petitioners were illegally dismissed.

We find in the affirmative and therefore hereby grant the petition.

The Constitution looks with compassion on the workingman and its intent in protecting his rights.[33] A worker's employment is property in a constitutional sense[34] and while the Court recognizes the right of an employer to terminate the services of an employee for a just or authorized cause, the dismissal of an employee must be made within the parameters of law and pursuant to the tenets of equity and fair play.[35] An employer's power to discipline his employees must not be exercised in an arbitrary

manner as to erode the constitutional guarantee of security of tenure.[36]

As correctly pointed out by petitioners, the burden of proving just cause for dismissing an employee rests upon the employer, and the employer's failure to discharge such burden results in a finding that the dismissal is unjustified and therefore illegal.[37] It is the employer who must prove the validity of the termination and not the employee who must prove the reverse.[38] The employer must affirmatively show rationally adequate evidence that the dismissal was for a justifiable cause.[39]

In this case, respondents claim that the excessive absences of petitioners justify their termination.

We disagree.

There must be a reasonable proportionality between the offense and the penalty.[40] Dismissal, without doubt, is the ultimate penalty that can be meted to an employee.[41] Thus, where a penalty less punitive would suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe.[42]

As well stated in *Philippine Long Distance Telecommunication v. National Labor Relations Commission*:[43]

The misery and pain attendant to the loss of jobs x x x could be avoided if there be acceptance of the view that under certain circumstances of the case the workers should not be deprived of their means of livelihood. [44]

While the power to dismiss is a formal prerogative of the employer, this is not without limitations.[45] The employer is bound to exercise caution in terminating the services of his employees and dismissals must not be arbitrary and capricious.[46] Due process must be observed and employers should respect and protect the rights of their employees which include the right to labor.[47] Indeed, to effect a valid dismissal, the law requires not only that there be just and valid cause; it must also be supported by clear and convincing evidence.[48]

In this case, the only basis of respondents in terminating the services of petitioners is that they incurred absences in 1997, in excess of the allowed number, despite a previous warning for their absences in 1996 and 1995. We find that in this case, termination is not a commensurate penalty. Even assuming that petitioners' absenteeism

constitutes willful disobedience, such offense does not warrant their dismissal.[49]

In the case of *Meralco v. National Labor Relations Commission*[50] which is being invoked by respondents, the employee was previously suspended seven times in a span of twelve years before the employer, which is a public utility, eventually terminated his services.[51] In said case, the Court found such termination to be justified. The same cannot be said in the present case as petitioners worked with respondents for seven to eight years and apart from their absences in 1995, 1996 and 1997, no other infraction was imputed on them.

The Court notes the rules of the company itself which provide for a progression of disciplinary measures to be meted out on erring employees. Pertinent portions of the Attendance Guidelines dated February 8, 1994 state:

x x x x

C. Leave without Pay

As a general rule, a leave without pay may be excused or unexcused, the latter covered by penalties, subject to management approval, as follows:

- LOP with excused reason for leave LOP(E) LOP (Excused)
- LOP with unexcused reason for leave LOP(U) LOP(Unexcused)
- LOP without leave application LOP(U) LOP(Unexcused)

An LOP(U) is subject to the following table of penalties, as stated in our Working Regulations:

1[st] Offense

Verbal Warning(VW)

2[nd] Written Warning (WW)

3[rd] Three Days Suspension (3DS)

4[th] Six Days Suspension (6DS)

5[th] Termination (T)[52]

Respondent company failed to show that it imposed on petitioners the lesser penalties first, before imposing on them the extreme penalty of termination.

As admitted by petitioners in their Reply filed before the LA and which became the basis of the LA in its Decision, petitioners received a memorandum with warning for their absences in 1995 and 1996.[53] A close scrutiny of the records reveals that petitioner Zagala served a 3-day suspension from November 3 to 5, 1997 for his unexcused absences.[54]

Taking each year, where petitioners failed to observe the allowed absences, as one offense each, respondent should have imposed on petitioners a verbal warning for their absences in 1995, a written warning in 1996, and 3-day suspension for their absences in 1997. As Zagala already served a 3-day suspension in 1997 for his excessive absences, only Angeles is left to answer for such penalty.

Considering the entirety of the case, the Court finds that petitioners have been illegally dismissed from employment. They are entitled to reinstatement without loss of seniority rights and the payment of back wages computed from the time of their termination[55] minus the amount equivalent to a 3-day suspension which Angeles should have served for his absences in 1997 and which amount shall be deducted from the backwages to be awarded to him.

If petitioners however no longer desire to be reinstated, they should be awarded separation pay at the rate of one (1) month for every year of service as an alternative.[56]

Consequently, the Court likewise reverses the portion of the CA Decision lifting the Writ of Garnishment dated December 9, 2002 on the account of Mikado with RCBC, Rosario Branch.

WHEREFORE, the petition is GRANTED. The Decision of the Court of Appeals in CA-G.R. SP No. 70416 dated August 27, 2003 and its Resolution dated November 17, 2003 are hereby REVERSED and SET ASIDE. Respondents Mikado Philippines Corporation and its President and Executive Vice-President Yoshinari Kono and Takehiko Ogura are directed to reinstate petitioners Nelson A. Zagala and Feliciano M. Angeles without loss of seniority rights, and to pay them backwages from the date of their termination. Should Angeles and Zagala opt not to be reinstated, respondents are ordered to pay them separation pay in the amount equivalent to one (1) month pay for every year of service, plus backwages from the date of their termination. In either case, the equivalent amount for 3-day suspension shall be deducted from the backwages awarded in favor of Angeles.

No costs.

SO ORDERED.

Panganiban, C. J. (Chairperson), Ynares-Santiago, Callejo, Sr., and Chico-Nazario concur.

[1] Penned by Associate Justice Mariano C. Del Castillo and concurred in by Associate Justices Bernardo P. Abesamis (retired) and Arturo D. Brion, rollo, pp. 34-43.

[2] Id. at 44.

[3] Records, pp.1 and 55.

[4] Id. at 56-57; 14-15.

[5] Id. at 58.

[6] Id. at 8.

[7] Id. at 18.

[8] Id. at 17.

[9] Id. at 55.

[10] Spelled as "Yoshinari" in the other parts of the records.

[11] Id. at 1; rollo, p. 12.

[12] Rollo, pp. 50-51.

[13] Id. at 49, see also records, p. 38.

[14] Records, pp. 100-103.

[15] Through Commissioner Alberto R. Quimpo and concurred in by Presiding Commissioner Roy V. Señeres and Commissioner Vicente S.E. Veloso.

[16] Rollo, pp. 56-61.

[17] Id. at 60-61.

[18] Id. at 38.

[19] Records, pp. 105-106.

[20] Id. at 115.

[21] Id. at 123-125.

[22] Id. at 127.

[23] Rollo, p. 42.

[24] Id. at 39-42.

[25] Id. at 44.

[26] Id. at 16-17.

[27] Id. at 17-30.

[28] Id. at 30.

[29] Id. at 88-94.

[30] Id. at 98-112.

[31] Id. at 132-161.

[32] Id. at 118-130.

[33] *Brew Master International Inc. v. National Federation of Labor Unions*, 337 Phil. 728, 737 (1997).

[34] *Asuncion v. National Labor Relations Commission*, 414 Phil. 329, 336 (2001).

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

[36] *Procter and Gamble v. Bondesto*, supra note 35, at 9-10; *Del Monte Philippines, Inc. v. National Labor Relations Commission*, 350 Phil. 510, 516 (1998).

[37] *Tower Industrial Sales v. Court of Appeals*, G.R. No. 165727, April 19, 2006; *Asuncion v. National Labor Relations Commission*, supra note 34; *Del Monte Philippines, Inc. v. National Labor Relations Commission*, supra note 36, at 517; *Philippine Airlines, Inc. v. National Labor Relations Commission*, 342 Phil. 352, 365 (1997).

[38] *Tower Industrial Sales v. Court of Appeals*, supra note 37.

[39] *Asuncion v. National Labor Relations Commission*, supra note 34, at 337.

[40] *Philips Semiconductors (Phils.), Inc. v. Fadriquela*, G.R. No. 141717, April 14, 2004, 427 SCRA 408, 425-426; *Procter and Gamble Philippines v. Bondesto*, supra note 35.

[41] *Union Motor Corporation v. National Labor Relations Commission*, G.R. No. 159738, December 9, 2004, 445 SCRA 683, 694; *Philips Semiconductors (Phils.), Inc. v. Fadriquela*, supra note 40, at 426; *Procter and Gamble Philippines v. Bondesto*, supra note 35, at 9.

[42] *Philips Semiconductors (Phils.), Inc. v. Fadriquela*, supra note 40, at 426; *Michael Inc. v. National Labor*

Relations Commission, 326 Phil. 472, 476 (1996).

[43] 362 Phil. 352 (1999).

[44] *Id.* at 359.

[45] Philips Semiconductors (Phils.), Inc. v. Fadriquela, *supra* note 40, at 426.

[46] *Id.*

[47] *Id.*

[48] Union Motor Corporation v. National Labor Relations Commission, *supra* note 41, at 694.

[49] See Procter and Gamble Philippines v. Bondesto, *supra* note 35.

[50] 331 Phil. 838 (1996).

[51] *Id.* at 849.

[52] Records, p. 25.

[53] *Id.* at 38, 59.

[54] *Id.* at 21, 31.

[55] See Procter and Gamble Philippines v. Bondesto, *supra* note 35, at 10; Asuncion v. National Labor Relations Commission, *supra* note 34, at 342.

[56] Procter and Gamble Philippines v. Bondesto, *supra* note 35, at 10-11; Velasco v. National Labor Relations Commission, G.R. No. 161694, June 26, 2006.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.