NATIONAL LABOR RELATIONS COMMISSION, ST. JUDE CATHOLIC SCHOOL, REV. FR. NOEL BEJO, MS. PRISCILLA LOPEZ, MS. NATIVIDAD TAN, MS. VILMA LAO, MS. JENNIFER GIL, MS. REMEDIOS CABANLIT...

G.R. NO. 164376. July 31, 2006

Ponente: CHICO-NAZARIO, J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/g-r-no-164376/

CHICO-NAZARIO, J.:

Before us is a Petition for Review of the Decision[1] and Resolution[2] of the Court of Appeals, dated 21 May 2003 and 1 July 2004, respectively, reversing and setting aside the Decision[3] dated 28 September 2001, and Resolution[4] dated 29 November 2001 of National Labor Relations Commission (NLRC), and reinstating the Decision[5] of Labor Arbiter Edgardo M. Madriaga, dated 11 January 2001, finding petitioners guilty of illegal dismissal.

The facts are:

In April 1988, respondent Maria Bernadette A. Salgarino was employed by petitioner St. Jude Catholic School as Mathematics teacher. She was tasked to teach Algebra, Trigonometry, Statistics and Analytical Geometry for third and fourth year high school students.[6]

On 15 February 1999, or two weeks before the fourth periodical test of that school year, respondent went on maternity leave. She was expected to be back in petitioner school on 19 March 1999. During her official leave, she conducted make-up tests in her house in order to improve the grades of some of her students. However, this was done by the respondent without the prior permission of petitioners. At this same period, her co-teachers, Ms. Maria Luisa Capistrano (Capistrano), Mrs. Angelita Rivera and Mrs. Michel Bongyad substituted for her in her classes. On 2 March 1999, the periodical test for Mathematics IV was conducted and the same was administered by Capistrano, since respondent was still on leave.[7]

One of herein petitioners, Head Teacher Ms. Priscila Lopez (Lopez), instructed the substitute teachers to check the test papers and compute the grades of the students in Sections 4-A, 4-B and 4-C.[8]

On 9 March 1999, the white sheets or the grading sheets for the 4th year students were accomplished by the substitute teachers. It was shown that some 4th year students obtained a failing grade in Math.[9] Subsequently, respondent, while still on leave, requested Capistrano to deliver to her house the white sheets which contained the grades in Math of respondent's students. Capistrano delivered the white sheets to respondent's home through a student named Eunice Weeguano.[10] Upon receiving them, respondent encircled the failing grades under the column of Daily Work (DW) and placed a passing grade beside each encircled grade. Respondent asserted that as the handling teacher, she had the prerogative to pass her students. She revealed that she required her students to do some projects and conducted make-up tests for them before she went on maternity leave and to improve the final grades of the concerned students. She avers that out of valid and humanitarian reasons, she indicated a

passing grade of 75% beside the grades of those with failing grades. Her decision was based on:

> (1) The concerned students could have performed better in their periodical test if a substitute teacher was assigned during the two weeks that she was on maternity leave before the examination;
>
> (2) [Respondent] had required her students before she went on leave to make extra projects and activities and those who had failing grades made well enough to pull up their grades;
>
> (3) The concerned students have good 4th quarter test results before she went on leave; and
>
> (4) Had the student[s] with the lowest grade (70%) been failed x x x, the school would have violated Section 68 (b) of the Manual of Regulation for Private Schools.[11]

Upon return of the white sheets, the substitute teachers noticed therein the additions made by respondent. The substitute teachers immediately reported the matter to Lopez who, in turn, referred the matter to petitioner Rev. Fr. Noel Bejo (Fr. Bejo), SVD, Acting Director/Principal of petitioner school.[12]

On 24 March 1999, Fr. Bejo instructed respondent to report to his office. He gave her a letter which directed her to submit herself to a panel of investigators and explain why she had allegedly tampered school records, violated school policies and committed misconduct.[13]

On 26 March 1999, respondent was investigated for her act of increasing the grades of her students while she was on maternity leave. Respondent and the substitute teachers were allowed to attend and participate in the investigation. The investigation yielded the following relevant facts[14]:

> (1) That respondent increased the grades of her students who failed;
>
> (2) That respondent gave tests in her house to some students;
>
> (3) That respondent's reason for giving tests in her house is because she wanted to help the students who were failing x x x. [S]he wanted to give considerations and she admitted that it was her fault for asking the students go to her house;
>
> (4) That respondent admitted changing her student's grades before they were submitted and checked by the school principal;
>
> (5) Respondent x x x argued that she had the right to pass her students.

The investigating panel reached the conclusion that respondent altered her students' grades while she was on leave, which is, according to them, a case of education malpractice or grave misconduct and grossly prejudicial to the good name of the petitioner school. In particular, the investigating committee found respondent to have violated Article XV, Section 79 and Article XVII, Section 94, paragraph (b) of the Manual of Regulations for Private Schools, to wit:

> Article XV, Section 79. Basis for Grading. The final grade or rating given to a pupil or student in a subject should be based solely on his scholastic performance. Any addition or diminution to the grade in a subject for co-curricular activities, attendance, or misconduct shall not be allowed, except as may otherwise be explicitly provided for by an individual school x x x, and provided further that such adjustments are relevant to the subject content and requirements x x x.
>
> Article XVII, Section 94, par. (b). Negligence in keeping school or student records, or tampering with or falsification of the same; x x x.

On these bases, the members of the investigating committee ruled to terminate respondent's services. On 15 April 1999, a termination letter was served on respondent. On 29 April 1999, respondent filed with the Labor Arbiter a

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

Complaint for illegal dismissal, proportionate 13[th] month pay, actual, moral and exemplary damages, and attorney's fees against petitioners.[15]

In his Decision[16] dated 11 January 2001, Labor Arbiter Edgardo Madriaga ruled that respondent was illegally dismissed as there was no valid or just cause to terminate her employment. The relevant portion of the Decision reads:

> A teacher has the academic freedom to pass or fail any or all her students as (sic) per his or her discretion. In this case, the teacher opted for liberality rather than strictness. There was no proof that she did so out of malice or immoral considerations. There are liberal or generous teachers and there are so-called terror teachers who prefer to flunk all their students. They balance each other out.
>
> We, therefore, rule that complainant was not dismissed for a valid or just cause.
>
> She is therefore entitled to reinstatement with backwages, proportionate 13th month pay and 10% thereof as attorney's fees, computed below as follows:
>
> x x x x
>
> WHEREFORE, premises considered, complainant is hereby declared to have been illegally dismissed, and respondent school is hereby directed to reinstate her and pay her money claims as computed above.

On appeal by petitioners, the NLRC reversed and set aside the Decision of the Labor Arbiter, on the ground that respondent's act of giving failing students higher grades than what they actually earned is tantamount to serious misconduct which justified her dismissal. The relevant portion of the NLRC Decision[17] reads:

> The very actuations of the complainant - first claiming that it was her prerogative to pull up failing grades, then blaming the substitute teachers for copying the grades she gave the failing students, and even Mr. Lopez for supposedly scheming to get rid of her; claiming that she gave the failing students extra projects before she went on leave, yet failing to reflect the credits they earned from the supposed extra projects in the grading sheets - are not consistent with her avowed innocence.
>
> In conclusion, this Commission finds the complainant's act of giving failing students higher grades than what they actually earned to be tantamount to serious misconduct, which justifies her dismissal. The notion of academic freedom, which to her credit, she did not raise as a defense, does not excuse her misconduct.
>
> WHEREFORE, the decision appealed from is hereby REVERSED and the instant case DISMISSED for lack of merit.

Respondent filed a Motion for Reconsideration of the NLRC Decision which was denied for lack of merit in a Resolution dated 29 November 2001.[18] Aggrieved, respondent filed a Petition for Certiorari before the Court of Appeals. The appellate court reversed and set aside the Decision dated 28 September 2001, and Resolution dated 29 November 2001 of the NLRC. Reinstating the 11 January 2001 Decision of the Labor Arbiter, the Court of Appeals ratiocinated:

> Absent any proof that the giving of passing grades was done with malice or immoral considerations, this court has no other choice but to declare that the herein petitioner [respondent] was illegally dismissed for choosing to be a considerate mentor to her students. Whether such choice is a mistake of the teacher should not be visited with a consequence so severe. Indeed, the penalty of dismissal is unduly harsh considering that the petitioner had been in the employ of the respondent school for eleven years and it does not appear that she had a previous derogatory record, notwithstanding the claim there was alleged breach of trust. The law regards the workers with compassion. Unemployment brings untold hardships and sorrows upon those dependent on the wage-earner.

> WHEREFORE, for having been issued with grave abuse of discretion, the assailed decision and resolution of the respondent commission are REVERSED and SET ASIDE. The Decision of Labor Arbiter Edgardo M. Madriaga is hereby REINSTATED.[19]

Petitioners moved for a reconsideration thereof, which was denied by the appellate court[20] in the Resolution dated 1 July 2004.

Consequently, on 2 September 2004, petitioners filed before this Court, a Petition for Review on Certiorari. In our Resolution[21] dated 13 October 2004, we denied the Petition in this wise:

> In accordance with Rule 45 and other related provisions of the 1997 Rules of Civil Procedure, as amended, governing appeals by certiorari to the Supreme Court, only petitions which are accompanied by or comply strictly with the requirements specified therein shall be entertained. On the basis thereof, the Court Resolves to DENY the petition for review on certiorari for petitioners' failure to:
>
> (a) submit a valid affidavit of service of copies of the petition in accordance with Sections 3 and 5, Rule 45 and Section 5(d), Rule 56 in relation to Section 13, Rule 13 of the Rules, since the jurat of the attached affidavit of service does not indicate the affiants' community tax certificate numbers or any competent evidence of affiants' identity; and
>
> (b) properly verify the petition in accordance with Section 1, Rule 45 in relation to Section 4, Rule 7, and submit a valid certification on nonforum shopping in accordance with Section 4(e), Rule 45 in relation to Section 5, Rule 7, Section 2, Rule 42 and Sections 4 and 5(d), Rule 56, since only five (5) of seven (7) petitioners signed the attached verification and certification of nonforum shopping, and no proof of authority has been shown by affiants to sign on behalf of petitioner school and co-petitioners x x x.[22]

On 4 April 2005, petitioners filed a Motion for Reconsideration with motion to exclude Rev. Fr. Noel Bejo and Jennifer Gill as petitioners, alleging therein that:

> The reason for the failure of Fr. Bejo and Ms. Gill to sign the verification and certification of non-forum shopping is the fact that they were impleaded in the case below merely in their representative capacities. Since they are no longer connected with the school, they are, for all intents, no longer interested in this case. The undersigned counsel still included their names in the caption with the intention to maintain consistency in the caption of the case as Fr. Bejo and Ms. Gill were also impleaded by herein respondent Salgarino in the Court of Appeals case she filed. Undersigned counsel now realizes that they should not have been included as petitioners in this case since there could be no personal liability on their part. The matter now in issue are limited to backwages and reinstatement, which concern only the school.[23]

Thus, we reinstated the Petition but replaced Rev. Fr. Teodoro Gapuz for Fr. Bejo as one of the petitioners hereof since Fr. Bejo was replaced by Fr. Gapuz as School Director in 2001.[24]

Petitioners raise the following issues for our consideration:

I

> WHETHER OR NOT RESPONDENT LABOR ARBITER MADRIAGA AND THE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR IN EXCESS OF JURISDICTION WHEN IT FOUND PRIVATE RESPONDENT SALGARINO TO HAVE BEEN ILLEGALLY DISMISSED NOTHWITHSTANDING THE FACT THAT PRIVATE RESPONDENT ADMITTED TO HAVE CHANGED THE FAILING GRADES TO PASSING MARKS OF THIRTY TWO (32) OF HER STUDENTS WHILE SHE WAS ON MATERNITY LEAVE.
>
> II

WHETHER OR NOT RESPONDENT LABOR ARBITER MADRIAGA AND THE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION WHEN IT RULED THAT PRIVATE RESPONDENT SALGARINO WAS ENTITLED TO REINSTATEMENT, BACKWAGES, 13[TH] MONTH PAY AND ATTORNEY'S FEES;

III

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE ERRONEOUS DECISION OF THE RESPONDENT LABOR ARBITER;

(A) THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION WHEN IT DID NOT RULE CATEGORICALLY ON THE ISSUE OF WHETHER OR NOT A TEACHER MAY CHANGE THE FAILING GRADES TO PASSING MARKS OF HER STUDENTS OR THAT THE GIVING OF GRADES IS DISCRETIONARY;

(B) THE HONORABLE COURT OF APPEALS COMMITTED A GLARING ERROR AND/OR ABUSE OF DISCRETION IN RULING THAT PETITIONERS FAILED TO PROVE THE JUST CAUSE OF PRIVATE COMPLAINANT'S DISMISSAL;

(C) THE HONORABLE COURT OF APPEALS COMMITTED GROSS ABUSE OF DISCRETION IN RULING THAT THERE WAS NO BREACH OF TRUST COMMITTED BY THE ERRANT PRIVATE RESPONDENT;

(D) THE HONORABLE COURT OF APPEALS COMMITTED GROSS ABUSE OF DISCRETION IN RULING THAT THE ERRANT TEACHER HAD THE RIGHT OR DISCRETION TO GIVE PASSING GRADES OUT OF HUMANITARIAN CONSIDERATIONS.

According to petitioners, Section 79 of the Manual of Regulations for Private Schools mandates that a student's grade should be based solely on his academic performance; that it is therefore a serious academic malpractice or grave misconduct for respondent to give grades that are not based on their scholastic performance; that it is a serious misconduct for respondent to give grades at the time she was still on maternity leave because she has no moral or legal authority then to do so; that there is nothing in the Manual which states that a teacher has the discretion or the option as to what grade she will give her students; and that a teacher has the obligation to determine the grades of students based solely on their academic performance.

The Labor Code commands that before an employer may legally dismiss an employee from the service, the requirement of substantial and procedural due process must be complied with. Under the requirement of substantial due process, the grounds for termination of employment must be based on just or authorized causes. The following are just causes for the termination of employment under Article 282 of the Labor Code:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or 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 causes analogous to the foregoing.

In the instant case, it appears that since respondent was still on maternity leave, the substitute teachers conducted

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

the final exams in Math for the 4th year students of respondent. Upon computation by the substitute teachers of the grades of the said students, it was shown that some of them obtained failing grades in Math. Subsequently, respondent requested one of the substitute teachers (Capistrano) to deliver to her house the white sheets which contained the grades in Math of respondent's students. With due respect to, and trust in, respondent as the handling teacher in Math, Capistrano delivered the white sheets to respondent through a student named Eunice Weeguano. Upon return of the white sheets, the substitute teachers discovered that the failing grades under the column of Daily Work (DW) were encircled and a passing grade was written beside each encircled grade.[25] The substitute teachers immediately reported the matter to Lopez who referred the matter to Fr. Bejo. The increase in grades enabled the concerned students to obtain a passing grade in Mathematics IV, and thus, were able to graduate on time.

Proceeding therefrom, we shall determine whether the aforesaid act of respondent constitutes serious misconduct which justified her dismissal from employment.

To our mind, the acts of the respondent in increasing the marks and indicating passing grades on the white sheets of her students while she was on maternity leave; of not having sought permission from petitioners before conducting the make-up tests in her house,[26] contrary to the policy of the petitioners that permission should first be granted before conducting make-up tests that must be conducted in the school premises; of making the increases in the grades of the students during her maternity leave which is not allowed since the substitute teachers were the ones authorized to compute and give the grades for the concerned students; and of invoking humanitarian consideration in doing so which is not a basis in the Manual of Regulations for Private Schools for grading a student, are all acts of transgression of school rules, regulations and policies.

Truly, then, respondent had committed a misconduct. However, such misconduct is not serious enough to warrant her dismissal from employment under paragraph (a) of Article 282 of the Labor Code.

Misconduct is defined as improper or wrong conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character and implies wrongful intent and not mere error of judgment. The misconduct to be serious within the meaning of the act must be of such a grave and aggravated character and not merely trivial or unimportant. Such misconduct, however serious, must nevertheless be in connection with the work of the employee to constitute just cause from his separation.[27]

In order to constitute serious misconduct which will warrant the dismissal of an employee under paragraph (a) of Article 282 of the Labor Code, it is not sufficient that the act or conduct complained of has violated some established rules or policies. It is equally important and required that the act or conduct must have been performed with wrongful intent.

There is no evidence to show that there was ulterior motive on the part of the respondent when she decided to pass her students. Also, it was not shown that respondent received immoral consideration when she did the same. From the Labor Arbiter up to this Court, respondent has maintained her stand that her decision to pass the concerned students was done out of humanitarian consideration.

Respondent was moved by pity when she learned that some of her students obtained a failing grade in her subject and, thus, will not graduate on time. Respondent believes that some of her students obtained a failing grade in her subject because they were not properly prepared for the 4th periodical exams. She claims that, although the substitute teachers conducted the 4th periodical exams and computed their grades, there were no teachers assigned to conduct classes, lectures and review before the said exam. Thus, unmindful of the events that may transpire thereafter, respondent decided to increase the marks of her students and gave them passing grades.

Respondent argued that had she failed the subject students, some of them would be enrolling in more than two subjects for summer which is not allowed under Section 68(b), Article XIII of the Manual[28] that provides that a student may enroll in no more than two subjects during the summer, either for the purpose of making up for subjects previously failed, or for earning advanced credits in other subjects. Respondent avers that some of the students with failing grades in Math had also failed in their two Chinese subjects. Hence, to avoid the violation of the Manual, respondent decided to pass these students.

Based on the foregoing, respondent may have committed an error of judgment in deciding to pass her students, but it cannot be said that she was motivated by any wrongful intent in doing so. As such, her misconduct cannot be considered as grave in character which would warrant her dismissal from employment. We, thus, find her to be guilty only of simple misconduct. It is settled that a misconduct, which is not serious or grave, cannot be a valid basis for dismissing an employee.[29]

Special consideration should also be given to the fact that respondent has been in the employ of petitioners for 10 years or more, and she has no previous derogatory record. Further, respondent is a recipient of numerous academic excellence awards and recognized by her students and some of her peers in the profession as a competent teacher. Given the foregoing, the penalty of dismissal imposed by petitioners on respondent for a first offense seems unduly harsh and disproportionate to the misconduct being complained of.[30] This Court has consistently ruled that the penalty to be imposed on an erring employee must be commensurate with the gravity of his offense.[31]

In the actual imposition by the employer of the penalties on erring employees, due consideration must be given to their length of service and the number of violations they have committed during their employ.[32] Where a penalty less punitive would suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe.[33] In light of the aforestated considerations, the penalty of dismissal will appear to be too drastic and unreasonable.

Petitioner invoked Section 94(b), Article XVII of the Manual of Regulations for Private Schools[34] which provides that the employment of a teacher may be terminated for negligence in keeping school or student records, or tampering with or falsification of the same. According to petitioners, respondent violated the said section when she encircled the failing grades under the DW and indicated a passing grade beside each encircled grade.

Assuming for the sake of argument that respondent had indeed violated Section 94(b) of the Manual, her dismissal from employment is still invalid. Section 94(b) uses the word "may" and not "shall.- In this jurisdiction, the tendency has been to interpret the word "shall" or "may" as the context or a reasonable construction of the statute in which they are used demands or requires. As a general rule, the word "may" when used in statute is permissive only and operates to confer discretion while the word "shall" is imperative, operating to impose a duty which may be enforced.[35] In the case at bar, the use of the word "may" under Section 94(b) thereof implies that petitioners are permitted and authorized to terminate the employment of respondent for tampering or falsification of school records. However, such authority is not absolute. It does not give petitioners the unlimited power to automatically terminate the employment of respondent. Such authority is merely permissive and discretionary. Such prerogative cannot be permitted by this Court if exercised arbitrarily and unfairly to defeat the constitutional protection to labor. Moreover, as heretofore pointed out, there are circumstances present in this case which mitigate the misconduct of respondent. It would be different if the word "shall" is used or the same is phrased in a negative manner. In such a case, the dismissal of respondent is mandatory and automatic.[36] We find no exception to deviate from this general rule of statutory construction.

Petitioners argue that the Labor Arbiter erred in ruling that respondent, as a teacher, has the academic freedom to

pass or fail any or all students per his or her discretion.

We agree, however, with the Court of Appeals that the issue of academic freedom is misplaced in this labor case. Academic freedom of faculty members refer to the freedom of teachers from control of thought or utterance of his academic research, findings or conclusions, and has nothing to do with the discretion of teachers to pass or fail any or all her students according to his discretion.[37] Hence, we find no compelling reason to determine the same.

Finally, petitioners contend that when respondent tampered the grades of her students, she willfully breached the trust and confidence reposed upon her by petitioners, thus, her dismissal is valid under paragraph (c) of Article 282 of the Labor Code.

We deviate.

In several cases, we made pronouncements that loss of confidence as a ground for validly dismissing an employee under Article 282 of Labor Code applies only to employees occupying positions of trust and confidence or those routinely charged with the care and custody of the employer's money or property. In the case of Mabeza v. National Labor Relations Commission,[38] we ruled that:

> [L]oss of confidence should ideally apply only to cases involving employees occupying positions of trust and confidence or to those situations where the employee is routinely charged with the care and custody of the employer's money or property. To the first class belong the managerial employees, i.e., those vested with the powers or prerogatives to lay down management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign, or discipline employees or effectively recommend such managerial actions; and to the second class belong cashiers, auditors, property custodians, etc., or those who, in the normal and routine exercise of their functions, regularly handle significant amounts of money or property x x x.

Likewise, in the case of Concorde Hotel v. Court of Appeals,[39] we declared that:

> Loss of confidence applies only to cases involving employees who occupy positions of trust and confidence, or those situations where the employee is routinely charged with the care and custody of the employer's money or property x x x.

In the instant case, it is clear that respondent is neither a managerial employee or one vested with the powers or prerogatives to lay down management prerogatives. Nor one belonging to the class of cashiers, auditors, property custodians, or those, who, in the normal and routine exercise of their functions, regularly handle significant amounts of money or property.

It is now settled that petitioners failed to comply with the requirement of substantial due process in terminating the employment of respondent. We will now determine whether petitioners had complied with the procedural aspect of lawful dismissal.

In the termination of employment, the employer must (a) give the employee a written notice specifying the ground or grounds of termination, giving to said employee reasonable opportunity within which to explain his side; (b) conduct a hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given the opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and (c) give the employee a written notice of termination indicating that upon due consideration of all circumstances, grounds have been established to justify his termination.[40]

Petitioners had complied with all of the above stated requirements as shown by the following established facts:

On 24 March 1999, petitioner Fr. Bejo instructed respondent to report to the former's office. He gave her a letter

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

which instructed her to submit herself to a panel and explain why she had allegedly tampered school records and violated school policies.[41]

On 26 March 1999, petitioners conducted an investigation on the matter which was held at the New Guidance Office of the petitioner School. The panel of investigators were composed of petitioners Fr. Bejo, Ms. Vilma Lao (Registrar), Mrs. Naty Tan, (Guidance Office Head), Lopez, Mr. Camilo Gelido, Mrs. Jennifer Gill, Ms. Remedios Cabanlit (High School Coordinators). Also present during the investigation were respondent and the substitute teachers. Petitioner Fr. Bejo propounded the following questions to respondent:

- Why did you ask students to take their tests in your house?

- Why did you make changes in the grades in class record and white sheets even before they were checked by Ms. Lopez?

- Why was there a big discrepancy in the grades?

- Why did you ask a student to bring the white sheets to your house? These are official school documents.

Respondent was allowed to answer the abovementioned questions. She explained and defended her acts. After the investigation, petitioners deliberated as to their course of action in resolving respondent's case. Subsequently, petitioners decided to dismiss the respondent from employment for violating Sections 79 and 94 of the Manual of Regulations for Private Schools, and for undue disregard of school policies.[42]

On 15 April 1999, a termination letter was served by petitioners on respondent.[43]

While petitioners had complied with the procedural aspect of due process in terminating the employment of respondent, they failed to comply with the substantive aspect of due process as the act complained of does not constitute serious misconduct. Hence, we still hold that the dismissal is illegal.

It must be emphasized at this point that the onus probandi to prove the lawfulness of the dismissal rests with the employer. In termination cases, the burden of proof rests upon the employer to show that the dismissal is for just and valid cause. Failure to do so would necessarily mean that the dismissal was not justified and therefore was illegal.[44] In the instant case, petitioners failed to discharge the burden of proving the legality and validity of respondent's dismissal.

We are not unmindful of the equally important right of petitioners, as employer, under our Constitution to be protected on their property and interest. However, the particular circumstances attendant in the instant case convinced us that the supreme penalty of dismissal upon respondent is not justified. The law regards the workers with compassion. Even where a worker has committed an infraction of company rules and regulations, a penalty less punitive than dismissal may suffice. This is not only because of the law's concern for the workingman. There is, in addition, his family to consider. Unemployment brings untold hardships and sorrows on those dependent upon the wage-earner.[45]

As a caveat, it would do well for respondent to act more conscientiously and with more regard to the policies of petitioners in the future. A repetition or similar misconduct may call for a more severe penalty in the future.

Finally, there being no evidentiary support for the claim of respondent for damages, the same was correctly denied by the Labor Arbiter and Court of Appeals.

WHEREFORE, the Petition for Review is DENIED. The Decision of the Court of Appeals dated 21 May 2003 and its Resolution dated 1 July 2004 in CA-G.R. SP No. 69955, are hereby AFFIRMED. Petitioners are hereby ORDERED to reinstate respondent to her former position or its equivalent without loss of seniority rights or

privileges plus full backwages computed from the time her salaries were withheld until she is finally reinstated. With costs.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Austria-Martinez, and Callejo, Sr., JJ., concur.

---

[1] Penned by Associate Justice Perlita J. Tria Tirona with Associate Justices Oswaldo D. Agcaoili and Edgardo F. Sundiam, concurring.

[2] Rollo, p. 56.

[3] CA rollo, pp.20-28.

[4] Id. at 29.

[5] Id. at 31-37.

[6] Id. at 7.

[7] Id. at 77-78.

[8] Rollo, p. 15.

[9] Id.

[10]CA rollo, p. 79.

[11]Id. at 10-11.

[12] Id at 11-12.

[13]Id. at 12.

[14] Rollo, p. 16.

[15] Id. at 17.

[16] CA rollo, pp. 31-37.

[17] Id. at 20-28.

[18] Id. at 29.

[19] Rollo, p. 53.

[20] Id. at 56.

[21] Id. at 104.

[22] Id.

[23] Id. at 109.

[24]Id. at 123.

[25]CA rollo, pp. 97-99.

[26] Id. at 90.

[27] Department of Labor Manual, Sec. 4343.01; Ha Yuan Restaurant v. National Labor Relations Commission,

G.R. No. 147719, 27 January 2006, 480 SCRA 328, 331-332, citing Colegio de San Juan de Letran-Calamba v. Villas, 447 Phil. 692, 699 (2003).

[28] 1992 Manual of Regulations for Private Schools, Article XIII, Section 68. Advanced Subjects and Back Subjects. As a general rule, a student shall not be permitted to take any advanced subject until he has satisfactorily passed the prerequisite subject or subjects. However, in the case of students in the secondary level, the following rules shall apply:

x x x x

b. A student may enroll in no more than two subjects during the summer, either for the purpose of making up for subjects previously failed, or for earning advanced credits in other subjects. x x x

[29] Radio Communications of the Philippines, Inc. v. National Labor Relations Commission, 327 Phil. 838, 849 (1996).

[30] Maranaw Hotels and Resorts Corp. v. Court of Appeals, G.R. No. 103215, 6 November 1992, 215 SCRA 501, 505.

[31]Philippine Telegraph and Telephone Corporation v. National Labor Relations Commission, G.R. No. 80600, 21 March 1990, 183 SCRA 451, 456.

[32]Tanduay Distillery Labor Union v. National Labor Relations Commission, G.R. No. 73352, 6 December 1994, 239 SCRA 1, 7.

[33] Meracap v. International Ceramics Mfg. Co., Inc., No. L-48235-36, 30 July 1979, 92 SCRA 412, 417, citing the case of Almira v. B.F. Goodrich Philippines, Inc., 157 Phil. 111, 121 (1974).

[34] 1992 Manual of Regulations for Private Schools, Article XVII, Section 94. Causes of Terminating Employment. In addition to the just causes enumerated in the Labor Code, the employment of school personnel, including faculty, may be terminated for any of the following causes:

x x x x

b. Negligence in keeping school or student records, or tampering with or falsification of the same; x x x.

[35] Dizon v. Encarnacion, 119 Phil. 20, 22-23 (1963).

[36] Bersabal v Salvador, No. L-35910, 21 July 1978, 84 SCRA 176, 179-180.

[37] Garcia v. The Faculty Admission Committee, Loyola School of Theology, G.R. No. L-40779, 28 November 1975, 68 SCRA 277, 285.

[38] 338 Phil. 386, 395-396 (1997).

[39] 414 Phil. 897, 906 (2001).

[40] Agabon v. National Labor Relations Commission, G.R. No. 158693, 17 November 2004, 442 SCRA 573, 608; Book VI, Rule I, Section 2(d) of the Omnibus Rules Implementing the Labor Code.

[41]CA rollo, p. 12.

[42] Id. at 21 and 274.

[43] Id. at 100-101.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

[44] Royal Crown Internationale v. National Labor Relations Commission, G.R. No. 78085, 16 October 1989, 178 SCRA 569, 578.

[45] Almira v. B.F. Goodrich Philippines, Inc., supra note 33 at 21-22.

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.