

REYNALDO Q. AGULLANO, PETITIONER, VS. CHRISTIAN PUBLISHING AND CATALINA LEONEN PIZARRO, RESPONDENTS.

G.R. No. 164850. September 25, 2008

Ponente: NACHURA, J.

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NACHURA, J.:

Before this Court is a Petition for Review on Certiorari under Rule 45 of the Revised Rules of Court filed by petitioner Reynaldo Q. Agullano seeking the reversal of the Decision[1] dated October 29, 2003 of the Court of Appeals (CA), and its Resolution of July 28, 2004, denying petitioner's motion for reconsideration. The assailed CA decision reversed the National Labor Relations Commission (NLRC) decision of January 22, 2003 which, in turn, affirmed the decision of the Labor Arbiter (LA) finding the respondent liable for having illegally dismissed the petitioner.

The facts of the case are as follows:

On February 15, 1999, respondent Christian Publishing, a single proprietorship engaged in the business of publishing books and printing in general, and owned by Catalina Leonen Pizarro, hired petitioner Reynaldo Q. Agullano as printing manager, with a monthly salary of P11,000.00. It was part of petitioner's duties to meet with prospective clients and to attend meetings of printing organizations.

On March 30, 2000, petitioner failed to attend a pre-bidding meeting at the Department of Education, Culture and Sports (DECS) over certain DECS projects to which respondent had pre-qualified. On the same day, petitioner also missed the general membership meeting of the Printing Industries Association of the Philippines (PIAP). The following day, respondent's Human Resources Department (HRD) Coordinator, Ms. Venus F. Barnuevo, sent to petitioner a memorandum which reads:

Please be informed that you have been negligent in attending business meetings designated by the Management that needs your presence. You are required to submit an explanation letter within 24 hrs. upon receiving this memo regarding your absence at DECS Meeting and PIAP General Membership meeting last March 30, 2000.[2]

On the same day, petitioner submitted his explanation through a letter, wherein he apologized to respondent saying that he forgot about these engagements. Petitioner explained that he arrived at the office in short pants and had to return home to change his attire, but that there was an on-going transport strike which caused his inability to keep the appointments.

On July 25, 2000, respondent, through the HRD Coordinator, sent petitioner a memorandum which reads:

Your habitual absences and tardiness has been noticed but you continue to exhibit such despite verbal warnings. You have been absent for one (1) week from July 3-8, then July 12, 22 & 24, 2000 and several days for the month of May and June. Brought about by the present financial situation of the company, we regret to inform you that the company can't tolerate employees who post a burden more to the situation.[3]

On July 26, 2000, respondent terminated petitioner's employment. The termination letter reads:

Please be informed that your function as Printing Manager is terminated effective this date due to multiple violations made against company rules and regulations as listed below:

- Habitual absences the following dates:

July 3-8, 2000

July 12, 22 & 24

- Several Saturday absences and tardiness for the month of May & June 2000;

- Absences on DECS and PIAP meeting you are delegated to attend on March 20, 2000.

You continued to exhibit such, despite verbal warnings. We regret to inform you that the company cannot tolerate such behavior.[4]

Aggrieved, petitioner filed a complaint[5] with the NLRC for illegal dismissal and damages. After hearing, LA Salimathar V. Nambi, on February 28, 2002, rendered a Decision, the decretal portion of which states:

IN VIEW OF THE FOREGOING, the dismissal of complainant is hereby declared illegal. However, in view of the strained relationship between complainant, instead of reinstatement, respondents are hereby ordered to pay complainant separation pay of one (1) month salary for every year of service from the date of employment to the date of termination.

In addition, respondents are also ordered to pay complainant a service incentive leave pay of five (5) days from date of employment to date of dismissal and pro-rated 13th month pay.

The Computation and Examination Unit of this Office is hereby directed to compute complainant's entitlements which shall form part of this decision.

All other claims are hereby DISMISSED for lack of basis.

SO ORDERED.[6]

Dissatisfied with the LA's decision, petitioner appealed to the NLRC, and on January 22, 2003, the NLRC decided the case, disposing as follows:

WHEREFORE, the assailed decision of 28 February 2002 is hereby MODIFIED in the sense that respondents-appellees are Ordered to pay the complainant-appellant his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of this decision.

All other claims are DISMISSED for lack of merit.

SO ORDERED.[7]

Respondents sought reconsideration of the NLRC decision, but the same was denied in a Resolution[8] dated May 6, 2003.

Respondents then filed with the CA a Petition for Certiorari under Rule 65 of the 1997 Rules of Civil Procedure, with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction, imputing grave abuse of discretion to the NLRC for its modification of the LA decision.

On October 29, 2003, the CA rendered its Decision, the dispositive portion of which reads:

WHEREFORE, the assailed decision dated January 22, 2003 of the Honorable Commission as well as the decision dated February 28, 2002 of the Honorable Labor Arbiter are hereby ANNULLED and SET ASIDE. The dismissal of private respondent Reynaldo Agullano from employment is hereby declared valid and in accordance with law.

Petitioner filed a motion for reconsideration, but the CA denied the same in a Resolution[9] dated July 28, 2004.

Thus, the instant petition.

The core issue in this controversy is whether petitioner was illegally dismissed.

The Constitution, statutes and jurisprudence uniformly mandate that no worker shall be dismissed except for a just or valid cause provided by law, and only after due process is properly observed. In a recent decision,[10] this Court said that dismissals have two facets: first, the legality of the act of dismissal, which constitutes substantive due process; and, second, the legality of the manner of dismissal, which constitutes procedural due process.

The just causes for termination of employment are enumerated in Article 282 of the Labor Code of the Philippines. In upholding the validity of Agullano's dismissal from employment, the CA relied on the aforesaid article, more specifically paragraphs (b) and (c) thereof, viz.:

ART. 282. An employer may terminate an employment for any of the following causes:

x x x x

(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;

Agreeing with respondent's position that the petitioner's acts amounted to these two just causes for termination, the CA expounded, thus:

Generally, tardiness and absenteeism, like abandonment, are a form of neglect of duty. In one case, acts of insubordination, coupled with habitual tardiness, were found sufficient causes for dismissal, especially considering the fact that the employees involved were not mere rank and file employees but supervisors who owed more than the usual fealty to the organization and were therefore expected to adhere to its rules in an exemplary manner.

Clearly, [petitioner's] unexplained absences and tardiness constitute habitual and gross neglect of duties. x x x

It must also be remembered that [petitioner] is a managerial employee, and as such, he enjoys the trust and confidence of his employer. The basic premise for dismissal on the ground of loss of confidence is that the employee concerned holds a position of trust and confidence. It is the breach of this trust that results in the employer's loss of confidence in the employee.[11]

On the basis of this exposition, there is, ostensibly, compliance with the first facet of a valid dismissal as there appears a just cause therefor.

However, on the second requisite, i.e., procedural due process, we find the respondent's compliance with the twin notice requirement sadly wanting and inadequate.

In *R.B. Michael Press v. Nicanor C. Galit*, [12] this Court had occasion to reiterate that under the twin notice requirement, the employees must be given two (2) notices before their employment could be terminated: (1) a first notice to apprise the employees of their fault, and (2) a second notice to communicate to the employees that their employment is being terminated. To this, we added:

Not to be taken lightly, of course, is the hearing or opportunity for the employee to defend himself personally or by counsel of his choice.

The procedure for this twin notice and hearing requirement was thoroughly explained in *King of Kings Transport v. Mamac*,^[13] in this wise:

(1) The first written notice to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.

(2) After serving the first notice, the employers should schedule and conduct a hearing or conference wherein the employees will be given an opportunity to (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, the conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.

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

A careful examination of the disciplinary procedure adopted by the respondent which led to the dismissal of petitioner shows that the respondent merely paid lip service to the foregoing procedural due process requirement.

First, the March 31, 2000 memorandum of respondent issued to the petitioner, after the latter failed to attend the DECS and the PIAP meetings, obviously did not satisfy the first written notice requirement. Albeit this memorandum required the petitioner to explain his absence in those two important meetings, there was clearly no intimation that the petitioner would be terminated from employment for this singular offense. No such intention to dismiss the petitioner can be inferred from the memorandum because this one infraction cannot be equated with "gross or habitual neglect," nor can it be characterized as "fraud or willful breach" by the petitioner of the respondents' trust reposed in him. This was even borne out by subsequent events, as it was not until four months later in the July 25, 2000 memorandum that respondents alluded to petitioner's termination from employment.

Second, even if we assume that the March 31, 2000 memorandum was already intended to serve as the first written notice, there would still be a breach of the procedural due process requirement, because no hearing or conference was called by the respondent at which petitioner could have presented his defenses. The absence of a hearing or conference likewise vitiates the July 25, 2000 memorandum. As we said in *R.B. Michael Press*:^[14]

(T)here is still a need to comply with the twin notice requirement and the requisite hearing or conference to ensure that the employees are afforded due process even though they may have been caught in flagrante or when the evidence of the commission of the offense is strong.

Third, if the July 25, 2000 memorandum is to be considered the first notice, it would suffer from patent

infirmities, and not just from the lack of a hearing or conference. It does not grant the petitioner an opportunity to answer the charges of absenteeism and tardiness; it does not give him time to seek the assistance of counsel; and most tellingly, it was to be followed the very next day with the notice of termination, effective immediately.

The respondents lamely proffer the hypothesis that there was substantial compliance with the twin notice and hearing requirement. Unfortunately, the records are bereft of any proof of compliance, much less substantial compliance, with the procedure outlined in *King of Kings Transport*.^[15]

In sum, we hold that the dismissal of petitioner from employment was attended by a violation, by the respondents, of procedural due process.

Given these findings, we find apropos our ruling in *Agabon v. NLRC*,^[16] in which this Court made the following pronouncement:

Where the dismissal is for a just cause, as in the instant case, the lack of statutory due process should not nullify the dismissal or render it illegal, or ineffectual. However, the employer should indemnify the employee for the violation of his statutory rights x x x. The indemnity to be imposed should be stiffer to discourage the abhorrent practice of "dismiss now, pay later" x x x.

Under the Civil Code, nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.

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. x x x.

Applying this principle in the light of the circumstances surrounding the case at bench, we deem it appropriate to fix the amount of nominal damages at P30,000.00. We likewise note as proper the petitioner's entitlement to the money equivalent of the five-day service incentive leave for the one year period of his employment, as found by the LA.

With this disquisition, we find no necessity to discuss the other issues raised in the pleadings.

WHEREFORE, premises considered, the Decision dated October 29, 2003 and the Resolution of July 28, 2004 of the Court of Appeals are **AFFIRMED WITH THE MODIFICATION** that respondents failed to comply with procedural due process in the termination of petitioner. Accordingly, respondents are ordered to pay petitioner the sum of P30,000.00, by way of nominal damages, and the money equivalent of the five-day service incentive leave to which he is entitled.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Reyes, JJ., concur.

[1] Penned by Associate Justice Danilo B. Pine, with Presiding Justice Cancio C. Garcia (later a member of this Court), and Associate Justice Renato C. Dacudao, concurring; rollo, pp. 33-41, 58.

[2] Rollo, p. 69.

[3] Id. at 6.

[4] Id.

[5] Docketed as NLRC-NCR-Case No. 00-07-03951-00.

[6] Id. at 62-63.

[7] Id. at 52.

[8] Id. at 55.

[9] Id. at 30-31.

[10] Ma. Wanelita Tirazona v. Court of Appeals, G.R. No. 169712, March 14, 2008, citing Shoemart, Inc. v. NLRC, G.R. No. 74229, August 11, 1989.

[11] Rollo, pp. 37-38.

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

[13] G.R. No. 166208, June 29, 2007, 526 SCRA 116, 125-126.

[14] Supra note 12.

[15] Supra note 13.

[16] G.R. No. 158693, November 17, 2004, 442 SCRA 573, 616-617.

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