

ELECTRO SYSTEM INDUSTRIES CORPORATION, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND NOEL BALTAZAR A. SUMACULUB, RESPONDENTS.

G.R. NO. 165282. October 05, 2005

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This petition for review on certiorari assails the May 12, 2004 Decision[1] of the Court of Appeals in CA-G.R. SP No. 69572, declaring that petitioner Electro System Industries Corporation did not comply with the statutory due process requirements in terminating the employment of private respondent Noel Baltazar A. Sumaculub. Likewise questioned is the September 13, 2004 Resolution[2] denying petitioner's motion for reconsideration.

The antecedent facts show that on March 17, 1994, private respondent was employed as driver of petitioner with a monthly salary of P5,700.00. During said employment, he figured in three vehicular accidents by reason of negligence. Specifically, while private respondent was driving a company car on April 18, 1997, he hit a motorcross bike driven by Gilbert Peña; on December 13, 1997, he bumped the rear portion of a Toyota Corolla car driven by Amelia Flores; and on August 7, 1998, he crashed into a Kalayaan Flyover post in Makati, Metro Manila. Petitioner thus incurred expenses in settling the damages caused by said mishaps.

On August 10, 1998, private respondent was dismissed by petitioner for repeated violation of company rules against reckless driving of company vehicles.[3] The former filed an illegal termination case before the Labor Arbiter which declared that the dismissal of private respondent is invalid.[4] Said decision was affirmed by the National Labor Relations Commission (NLRC).[5]

On appeal, the Court of Appeals ruled that the termination of private respondent is valid because there exists a just cause to dismiss him from employment. However, it declared that petitioner failed to comply with the requisite statutory due process in terminating private respondent. Hence, petitioner was ordered to pay backwages from the date of the dismissal until finality of the decision. The decretal portion thereof, reads:

WHEREFORE, the petition is partly GRANTED, declaring that there is just cause for the private respondent's dismissal. However, since such dismissal is rendered ineffectual, the private respondent is entitled to, and petitioner is DIRECTED to pay him, backwages from the time of the latter's termination until the finality of this decision.

Let this case be REMANDED to the Labor Arbiter for computation of the backwages.

SO ORDERED.[6]

Petitioner's motion for reconsideration was denied in a resolution dated September 13, 2004.[7]

Hence, the instant petition.

The issue to be resolved is whether petitioner observed the twin notice rule in dismissing private respondent.

The procedure for terminating an employee is found in Book VI, Rule I, Section 2(d), of the Omnibus Rules Implementing the Labor Code:

(d) In all cases of termination of employment, the following standards of due process shall be substantially observed:

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

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

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

(iii) 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 dismissing an employee, the employer has the burden of proving that the former worker has been served two notices: (1) one to apprise him of the particular acts or omissions for which his dismissal is sought, and (2) the other to inform him of his employer's decision to dismiss him.[8] In *Tan v. NLRC*, [9] it was held that the first notice must state that dismissal is sought for the act or omission charged against the employee, otherwise, the notice cannot be considered sufficient compliance with the rules.

Also, in *Maquiling v. Philippine Tuberculosis Society, Inc.*, [10] it was stressed that the first notice must inform outright the employee that an investigation will be conducted on the charges particularized therein which, if proven, will result to his dismissal. Such notice must not only contain a plain statement of the charges of malfeasance or misfeasance but must categorically state the effect on his employment if the charges are proven to be true. The rationale for this rule was explained by the Court as follows:

This notice will afford the employee an opportunity to avail all defenses and exhaust all remedies to refute the allegations hurled against him for what is at stake is his very life and limb his employment. Otherwise, the employee may just disregard the notice as a warning without any disastrous consequence to be anticipated. Absent such statement, the first notice falls short of the requirement of due process. One's work is everything, thus, it is not too exacting to impose this strict requirement on the part of the employer before the dismissal process be validly effected. This is in consonance with the rule that all doubts in the implementation and interpretation of the provisions of the Labor Code, including its implementing rules and regulations, shall be resolved in favor of labor.

In the instant case, the first notice issued by petitioner fell short of the requirement of the law because it merely referred to the section of the company rule allegedly violated by private respondent. The notice failed to specify the penalty for the charges which is dismissal, and to indicate the precise act or omission which constituted as the ground for which dismissal is sought. The full text of the notice reads:

You are hereby notified to appear for an administrative investigation scheduled on 10 August 1998 due to violation of Rule 34 of Company Rules & Regulation that occurred on 07 August 1998. This is the third time that you have committed offense of similar nature.

You are enjoined to attend this meeting.[11]

There is no showing that private respondent was actually served with the required two notices. The first notice did not bear the signature of private respondent. In the second notice, there was a notation that private respondent refused to sign. This notation is not sufficient proof that petitioner attempted to serve the second notice to private

respondent.

In sum, other than petitioner's bare assertions that private respondent was furnished with copies of the notices and that he attended the hearing on the charges, it presented no other proof to establish the same. Mere allegation is not equivalent to proof or evidence.[12] Clearly therefore, petitioner was not able to discharge the burden of proving compliance with the employee's right to statutory due process in termination proceedings.

However, petitioner should not be made to pay private respondent's backwages. In *Agabon v. National Labor Relations Commission*,[13] it was held that 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 violation of his statutory rights. Thus, applying *Agabon*, the Court, in *Central Luzon Conference Corporation of Seventh Day Adventist Church, Inc. v. Court of Appeals*,[14] modified the decision of the Court of Appeals by awarding P30,000.00 to an employee who was dismissed for just cause but was not afforded due process. As explained by the Court:

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 (*Savellano v. Northwest Airlines*, G.R. No. 151783, 8 July 2003, 405 SCRA 416). 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.

Conformably, the award of backwages in the present case should be deleted. Instead, private respondent should be indemnified in the amount of P30,000.00 as nominal damages which we consider as appropriate under the circumstances.

WHEREFORE, the May 12, 2004 Decision and the September 13, 2004 Resolution of the Court of Appeals in CA-G.R. SP No. 69572, which declared that petitioner Electro System Industries Corporation did not comply with the statutory due process requirements in terminating the employment of private respondent Noel Baltazar A. Sumaculub, are **AFFIRMED** with the **MODIFICATION** that the award of backwages is deleted. Petitioner is ordered to pay private respondent Noel Baltazar A. Sumaculub nominal damages in the amount of P30,000.00.

No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Quisumbing, Carpio, and Azcuna, JJ., concur.

[1] Rollo, pp. 53-61. Penned by Associate Justice Delilah Vidallon-Magtolis and concurred in by Associate Justices Edgardo P. Cruz and Noel G. Tijam.

[2] *Id.* at 17.

[3] *Id.* at 75.

[4] *Id.* at 20-25. Penned by Labor Arbiter Facundo L. Leda.

[5] *Id.* at 26-30. Penned by Commissioner Ireneo B. Bernardo and concurred in by Commissioners Lourdes C. Javier and Tito F. Genilo.

[6] *Id.* at 61.

[7] Id. at 17.

[8] Tan v. NLRC, 359 Phil. 499, 516 (1998).

[9] Id. at 516-517.

[10] G.R. No. 143384, February 4, 2005, 450 SCRA 465, 477.

[11] Rollo, p. 74.

[12] Masagana Concrete Products v. NLRC, 372 Phil. 459, 472 (1999).

[13] G.R. No. 158693, November 17, 2004, 442 SCRA 573, 616.

[14] G.R. No. 161976, August 12, 2005.

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