

**ASIAN TERMINALS, INC., PETITIONER, VS. NEPTHALLY B. SALLAO
AND ASIAN TERMINALS, INC. (MARIVELES) WORKERS' UNION, RESPONDENTS.**

G.R. No. 166211. July 14, 2008

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For review on certiorari are the Decision[1] dated January 13, 2004, and the Resolution[2] dated November 12, 2004, of the Court of Appeals in CA-G.R. SP No. 68457. The appellate court had affirmed the Decision[3] dated July 31, 2000, of the National Labor Relations Commission (NLRC) in CA No. 020887-99, which reversed the Decision [4] dated June 30, 1999, of the Labor Arbiter in NLRC Case No. RAB-III-12-9645-98.

The antecedent facts are as follows.

Nepthally B. Sallao (Sallao) was employed as an electrician by petitioner Asian Terminals, Inc. (ATI). On September 22, 1998, ATI, through Lt. Leonardo M. Soriano, Detachment Commander of the Core Security & Training Agency Corp., conducted an investigation regarding the loss and sale of electric copper wire cable. Lt. Soriano reported that Sallao admitted having sold the wire cable and shared the proceeds with his three co-employees. His co-employees submitted their sworn statements [5] where they detailed how the aforecited infraction was committed.

In a Memorandum[6] dated September 24, 1998, Sallao was directed to explain within 48 hours his participation in the aforecited infraction. In the meantime, he was placed under preventive suspension. On September 28, 1998, Sallao submitted his written explanation[7] wherein he denied the allegations against him. He requested that an investigation in the presence of his counsel be conducted and that he be given copies of the sworn statements of his co-employees.

In his progress report dated October 20, 1998, Lt. Soriano recommended that Sallao be penalized for unauthorized disposition/sale of company property. On October 20, 1998, ATI dismissed Sallao effective immediately.[8]

Sallao then filed on December 3, 1998 a Complaint[9] for illegal dismissal with prayer for reinstatement and payment of backwages, damages, and other monetary claims. On June 30, 1999, the Labor Arbiter dismissed his complaint. The Labor Arbiter found that all evidence pointed to Sallao as the one responsible for the loss of the wire cable. He also ruled that Sallao was afforded due process since ATI conducted an investigation before dismissing him.[10]

On appeal, the NLRC reversed the Labor Arbiter's decision. It ruled that since the sworn statements of Sallao's co-employees were unverified, the same cannot be given any weight. It also noted that the sworn statements were tainted with inconsistencies and falsities. Thus, Sallao should have been given the opportunity to confront his co-employees. The NLRC decreed:

WHEREFORE, premises considered, the decision under review is hereby REVERSED and SET ASIDE and a

new one entered, declaring complainant's dismissal from employment as illegal.

Accordingly, respondent Asian Terminal, Inc. is ordered to reinstate the complainant to his former position without loss of seniority rights and to pay him full backwages to be computed from the time of his dismissal until the finality of this decision.

SO ORDERED.[11]

ATI filed a petition for certiorari before the Court of Appeals, which affirmed the NLRC decision. Hence, the instant petition raising the following issues:

I.

THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW WHEN IT RULED THAT DUE PROCESS WAS NOT OBSERVED IN TERMINATING THE SERVICES OF THE RESPONDENT.

II.

THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW WHEN IT RULED THAT THE TERMINATION OF THE SERVICES OF THE RESPONDENT WAS WITHOUT JUST CAUSE.

III.

THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW WHEN IT AFFIRMED THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION WITH RESPECT TO THE REINSTATEMENT OF RESPONDENT TO HIS FORMER POSITION WITHOUT LOSS OF SENIORITY RIGHTS AND PAYMENT OF FULL BACKWAGES TO BE COMPUTED FROM THE TIME OF HIS DISMISSAL UNTIL THE FINALITY OF THE DECISION.[12]

Simply stated, the issue is whether Sallao was validly dismissed for cause and with due process.

ATI contends that there was substantial evidence to prove that Sallao was responsible for the loss and sale of electric copper wire cable. In his report, Lt. Soriano disclosed that Sallao admitted having sold the wire cable and shared the proceeds with his three co-employees. Such admission was supported by the sworn statements executed by his co-employees involved in the incident. ATI argues that although the statements were unverified, the same should be given probative value since technical rules of procedure are not binding in proceedings before the Labor Arbiter. ATI further avers that its denial of Sallao's request for an investigation in the presence of his counsel should not be taken to mean that he was deprived of due process. Sallao was in fact given the opportunity to submit within 48 hours his written explanation.

Sallao counters that the twin requirements of notice and hearing are conditions sine qua non before a dismissal may be effected. Having been deprived of the same, he is entitled to the reliefs granted by the NLRC.

Settled is the rule that the requisites of a valid dismissal are: (1) the employee must be afforded due process, i.e., he must be given an opportunity to be heard and to defend himself; and (2) the dismissal must be for any of the just causes provided in Article 282 of the Labor Code or for any of the authorized causes under Articles 283[13] and 284 [14] of the same Code.[15]

Under Article 282 of the Labor Code, the following are deemed just causes to terminate an employee: (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.

Per notice of the termination of his employment, Sallao was dismissed for unauthorized withdrawal, use and disposal of company property. In *Philippine Long Distance Telephone Co. v. NLRC*,^[16] we declared that theft of company property is a recognized just and valid cause for dismissing an employee under Article 282 (a), (c) and (e), as enumerated above.^[17]

After reviewing the records of this case, we are in agreement that Sallao's dismissal was in accordance with the law. Upon its discovery of the loss and sale of electric copper wire cable, ATI conducted an initial investigation through Lt. Soriano. In his memorandum, Lt. Soriano disclosed that Sallao admitted his complicity in the incident. To buttress ATI's initial finding, Sallao's co-employees submitted their respective sworn statements where they identified him as the one responsible for the incident.

We note that when ATI required Sallao to explain his alleged infraction, he merely denied in general the allegations and requested for an investigation in the presence of his counsel and for copies of the sworn statements of his co-employees. Sallao never squarely addressed Lt. Soriano's report that Sallao admitted during the initial investigation that he sold the wire cable and shared the proceeds with his three co-employees. Even in the pleadings submitted in this case, Sallao remained silent on this point.

As the admission stands, we are persuaded that Sallao indeed committed the aforecited infraction. In effect, the sworn statements of his co-employees merely corroborated his admission. Thus, we find no need to delve into the probative value of the sworn statements since his guilt has been proven by his own admission.

On the issue of due process, it is settled that notice and hearing constitute the essential elements of due process in the dismissal of employees. The employer must furnish the employee with two written notices before termination of employment can be legally effected. The first apprises the employee of the particular acts or omissions for which his dismissal is sought. The second informs the employee of the employer's decision to dismiss him. With regard to the requirement of a hearing, the essence of due process lies simply in an opportunity to be heard, and not that an actual hearing should always and indispensably be held.^[18]

In this case, ATI appears to have complied with these requirements. ATI furnished Sallao with a Memorandum dated September 24, 1998, apprising him of the particular acts or omissions constituting the alleged infraction and requiring him to explain within 48 hours. Instead of submitting a written explanation, Sallao merely denied in general the allegations against him and requested for an investigation in the presence of his counsel. He also requested that he be furnished with the sworn statements of his co-employees. Moreover, Sallao submitted his request only on September 28, 1998, beyond the 48-hour period given by ATI. In any event, ATI furnished Sallao with a notice of termination informing him of the basis of his dismissal.

Thus, we find that Sallao was afforded due process before he was dismissed. Even if no face-to-face hearing was conducted, the requirement of due process had been met since he was accorded a chance to explain his side of the controversy.

WHEREFORE, the instant petition is GRANTED. The Decision dated January 13, 2004, and the Resolution dated November 12, 2004, of the Court of Appeals in CA-G.R. SP No. 68457 are REVERSED and SET ASIDE. The Decision dated June 30, 1999, of the Labor Arbiter in NLRC Case No. RAB-III-12-9645-98 is REINSTATED.

No pronouncement as to costs.

SO ORDERED.

Carpio Morales, Tinga, and Brion, JJ., concur.

Velasco, Jr., J., Pls. see separate concurring opinion.

[1] Rollo, pp. 38-49. Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Delilah Vidallon-Magtolis and Jose L. Sabio, Jr. concurring.

[2] Id. at 63-64.

[3] CA rollo, pp. 21-40.

[4] Id. at 94-104.

[5] Id. at 82-88.

[6] Id. at 89.

[7] Id. at 92.

[8] Id. at 79.

[9] Id. at 44-48.

[10] Id. at 102-104.

[11] Id. at 39.

[12] Rollo, pp. 21-22.

[13] ART. 283. Closure of establishment and reduction of personnel. – The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the worker and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered as one (1) whole year.

[14] ART. 284. Disease as ground for termination. – An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

[15] National Bookstore, Inc. v. Court of Appeals, G.R. No. 146741, February 27, 2002, 378 SCRA 194, 200-201.

[16] No. L-53552, October 18, 1988, 166 SCRA 422.

[17] Id. at 427.

[18] Metropolitan Bank and Trust Company v. Barrientos, G.R. No. 157028, January 31, 2006, 481 SCRA 311, 321-322.

SEPARATE CONCURRING OPINION

VELASCO, JR., J.

I concur with the well-written ponencia of my esteemed colleague. However, I would like to register my observations in relation to the statement that "with regard to the requirement of a hearing, the essence of due process lies simply in an opportunity to be heard, and not that of an actual hearing should always and indispensably be held."^[1] Moreover, elucidation is needed on the concluding statement that "even if no face-to-face hearing was conducted, the requirement of due process had been met since he was accorded a chance to explain his side of the controversy."

The aforementioned conclusions are correct when applied to the instant case. While no hearing or conference was conducted by petitioner Asian Terminals, Inc. in September 1998 when the administrative proceedings were held against respondent Sallao, the absence thereof does not constitute a breach of the procedural due process for such was the settled jurisprudence as enunciated in *MBTC v. Barrientos*, G.R. No. 157028, Jan. 31, 2006, 481 SCRA 311 and other related cases.

However, on June 29, 2007, the Court in *King of Kings Transport, Inc. v. Mamac*,^[2] explained that the requirement of a hearing or conference is an indispensable element of procedural due process, thus:

Due process under the Labor Code involves two aspects: first, substantive - the valid and authorized causes of termination of employment under the Labor Code; and second, procedural - the manner of dismissal. In the present case, the CA affirmed the findings of the labor arbiter and the NLRC that the termination of employment of respondent was based on a "just cause." This ruling is not at issue in this case. The question to be determined is whether the procedural requirements were complied with.

Art. 277 of the Labor Code provides the manner of termination of employment, thus:

Art. 277. Miscellaneous Provisions. – x x x (b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer.

Accordingly, the implementing rule of the aforesaid provision states:

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:

- 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 said

employee reasonable opportunity with which to explain his side.

(b) 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.

(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.

To clarify, the following should be considered in terminating the services of employees:

(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. 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 the 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, this 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.

In the instant case, KKTi admits that it had failed to provide respondent with a "charge sheet." However, it maintains that it had substantially complied with the rules, claiming that "respondent would not have issued a written explanation had he not been informed of the charges against him."

We are not convinced.

First, respondent was not issued a written notice charging him of committing an infraction. The law is clear on the matter. A verbal appraisal of the charges against an employee does not comply with the first notice requirement. In *Pepsi-Cola Bottling Co. v. NLRC*, the Court held that consultations or conferences are not a substitute for the actual observance of notice and hearing. Also, in *Loadstar Shipping Co., Inc. v. Mesano*, the Court, sanctioning the employer for disregarding the due process requirements, held that the employee's written explanation did not excuse the fact that there was a complete absence of the first notice.

Second, even assuming that petitioner KKTi was able to furnish respondent an Irregularity Report notifying him of his offense, such would not comply with the requirements of the law. We observe from the irregularity reports

against respondent for his other offenses that such contained merely a general description of the charges against him. The reports did not even state a company rule or policy that the employee had allegedly violated. Likewise, there is no mention of any of the grounds for termination of employment under Art. 282 of the Labor Code. Thus, KKTI's "standard" charge sheet is not sufficient notice to the employee.

Third, no hearing was conducted. Regardless of respondent's written explanation, a hearing was still necessary in order for him to clarify and present evidence in support of his defense. Moreover, respondent made the letter merely to explain the circumstances relating to the irregularity in his October 28, 2001 Conductor's Trip Report. He was unaware that a dismissal proceeding was already being effected. Thus, he was surprised to receive the November 26, 2001 termination letter indicating as grounds, not only his October 28, 2001 infraction, but also his previous infractions.

Article 277 of the Labor Code speaks of a "written notice containing a statement of the causes for termination and shall afford the [employee] ample opportunity to be heard and defend himself with the assistance of his representative". The Court, in the Metrobank (MBTC) case, gave such provision a myopic and restrictive interpretation which appears off-tangent to the constitutional protection to labor. This strict interpretation was discarded in King of Kings Transport for the following reasons:

- The first written notice containing the charges does not encompass the 2nd requisite of opportunity to be heard. Note should be taken of the conjunctive "and" which means that the written notice should be distinct from the opportunity to be heard. While it may be conceded that the first notice gives the employee reasonable opportunity to explain his side, such does not cover the 2nd requisite of ample opportunity to be heard and defend himself with the assistance of his representative which will necessitate the conduct of a hearing or conference to give the laborer the chance to respond to the charge, present evidence or rebut the evidence presented against him. "Ample" means full and more than adequate chances to be heard and defend himself against the charges leveled on him. Without the hearing or conference, the written reply or answer to the first notice is insufficient to fully explain and support his defenses, present evidence in support of his defenses due to time constraints in the preparation of the answer and rebut the evidence of the employer since the first notice does not usually contain the evidence intended to support the charges. In addition, the employee's counsel or representative can better articulate his defenses in an actual hearing than by just merely relying on a written reply or answer.

- The Secretary of Labor is given the power to promulgate rules and regulations to implement the Labor Code. Pursuant to such rule-making power, he approved the Omnibus Rules Implementing the Labor Code which provides in part:

Sec. 2. Standards of due process, requirements of notice.—

x x x x

I.

x x x x

(b) 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.[3]

Any rule or regulation in the implementation of a law issued by the rule-making authority has the force and effect of law.[4]

- The constitutional provisions on protection to labor and social justice dictate that a liberal interpretation be

accorded Article 277 of the Labor Code on the requirement giving an employee ample opportunity to be heard and defend himself.

Thus, I submit that effective June 29, 2007 when the King of Kings Transport v. Mamac was promulgated, the prevailing rule is that the hearing or conference is one of the vital requirements of procedural due process in the dismissal of employees. Non-compliance therewith would be a ground for the imposition of the indemnity of PhP 30,000.

[1] Decision, p. 6.

[2] G.R. No. 166208, June 29, 2007, 526 SCRA 116, 123-127.

[3] OMNIBUS RULES IMPLEMENTING THE LABOR CODE, BOOK V, Rule XXIII.

[4] Commissioner of Internal Revenue v. Court of Appeals, G.R. No. 119761, August 29, 1996, 261 SCRA 236; De La Salle University Medical Center and College of Medicine v. Laguesma, G.R. No.102084, August 12, 1998, 294 SCRA 141.

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