

MANSION PRINTING CENTER AND CLEMENT CHENG, PETITIONERS, VS. DIOSDADO BITARA, JR. RESPONDENT.

G.R. No. 168120. January 25, 2012

Ponente: PEREZ, J.

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PEREZ, J.:

Before us is a petition for review on certiorari seeking to reverse and set aside the issuances of the Court of Appeals in CA-GR. SP No. 70965, to wit: (a) the Decision[1] dated 18 March 2004 granting the petition for certiorari under Rule 65 of herein respondent Diosdado Bitara, Jr.; and (b) the Resolution[2] dated 10 May 2005 denying the petitioners Motion for Reconsideration of the Decision. The assailed decision of the Court of Appeals reversed the findings of the National Labor Relations Commission[3] and the Labor Arbiter[4] that respondent was validly dismissed from the service.

The Antecedents

Petitioner Mansion Printing Center is a single proprietorship registered under the name of its president and co-petitioner Clement Cheng. It is engaged in the printing of quality self-adhesive labels, brochures, posters, stickers, packaging and the like.[5]

Sometime in August 1998, petitioners engaged the services of respondent as a helper (kargador). Respondent was later promoted as the company's sole driver tasked to pick-up raw materials for the printing business, collect account receivables and deliver the products to the clients within the delivery schedules.[6]

Petitioners aver that the timely delivery of the products to the clients is one of the foremost considerations material to the operation of the business.[7] It being so, they closely monitored the attendance of respondent. They noted his habitual tardiness and absenteeism.

Thus, as early as 23 June 1999, petitioners issued a Memorandum[8] requiring respondent to submit a written explanation why no administrative sanction should be imposed on him for his habitual tardiness.

Several months after, respondent's attention on the matter was again called to which he replied:

29 NOV. 1999

MR. CLEMENT CHENG

SIR:

I UNDERSTAND MY TARDINESS WHATEVER REASON I HAVE AFFECTS SOMEHOW THE DELIVERY SCHEDULE OF THE COMPANY, THUS DISCIPLINARY ACTION WERE IMPOSED TO ME BY THE MANAGEMENT. AND ON THIS END, ACCEPT MY APOLOGIES AND REST ASSURED THAT I WILL COME ON TIME (ON OR BEFORE 8:30 AM) AND WILLINGNESS TO EXTEND MY SERVICE AS A COMPANY DRIVER. WHATEVER HELP NEEDED. (sic)

RESPECTFULLY YOURS,
(SGD.) DIOSDADO BITARA, JR.[9]

Despite respondent's undertaking to report on time, however, he continued to disregard attendance policies. His weekly time record for the first quarter of the year 2000[10] revealed that he came late nineteen (19) times out of the forty-seven (47) times he reported for work. He also incurred nineteen (19) absences out of the sixty-six (66) working days during the quarter. His absences without prior notice and approval from March 11-16, 2000 were considered to be the most serious infraction of all[11] because of its adverse effect on business operations.

Consequently, Davis Cheng, General Manager of the company and son of petitioner Cheng, issued on 17 March 2000 another Memorandum[12] (Notice to Explain) requiring respondent to explain why his services should not be terminated. He personally handed the Notice to Explain to respondent but the latter, after reading the directive, refused to acknowledge receipt thereof.[13] He did not submit any explanation and, thereafter, never reported for work.

On 21 March 2000, Davis Cheng personally served another Memorandum[14] (Notice of Termination) upon him informing him that the company found him grossly negligent of his duties, for which reason, his services were terminated effective 1 April 2000.

On even date, respondent met with the management requesting for reconsideration of his termination from the service. However, after hearing his position, the management decided to implement the 21 March 2000 Memorandum. Nevertheless, the management, out of generosity, offered respondent financial assistance in the amount of P6,110.00 equivalent to his one month salary. Respondent demanded that he be given the amount equivalent to two (2) months' salary but the management declined as it believed it would, in effect, reward respondent for being negligent of his duties.[15]

On 27 April 2000, respondent filed a complaint[16] for illegal dismissal against the petitioners before the Labor Arbiter. He prayed for his reinstatement and for the payment of full backwages, legal holiday pay, service incentive leave pay, damages and attorney's fees.[17]

In his Position Paper[18] filed with the Labor Arbiter, respondent claimed that he took a leave of absence from March 17-23, 2000[19] due to an urgent family problem. He returned to work on 24 March 2000[20] but Davis Cheng allegedly refused him admission because of his unauthorized absences.[21] On 1 April 2000, respondent was summoned by Davis Cheng who introduced him to a lawyer, who, in turn, informed him that he will no longer be admitted to work because of his 5-day unauthorized absences. Respondent explained that he was compelled to immediately leave for the province on 17 March 2000[22] due to the urgency of the matter and his wife informed the office that he will be absent for a week. The management found his explanation unacceptable and offered him an amount equivalent to his one (1) month salary as separation pay but respondent refused the offer because he wanted to keep the job.[23] In his Reply to Respondents' Position Paper,[24] however, respondent averred that he rejected the offer because he wanted an amount equivalent to one and a half months' pay.

On 21 December 2000, the Labor Arbiter dismissed the complaint for lack of merit.[25]

On appeal to the National Labor Relations Commission (hereinafter referred to as the Commission), the findings of the Labor Arbiter was AFFIRMED en toto. Thus, in its Resolution of 29 June 2001 in NLRC NCR CA No. 027871-01, the Commission declared:

Upon Our review of the record of the case, We perceive no abuse of discretion as to compel a reversal. Appellant failed to adduce convincing evidence to show that the Labor Arbiter in rendering the assailed

decision has acted in a manner inconsistent with the criteria set forth in the foregoing pronouncement.

Neither are we persuaded to disturb the factual findings of the Labor Arbiter a quo. The material facts as found are all in accordance with the evidence presented during the hearing as shown by the record.

WHEREFORE, finding no cogent reason to modify, alter, much less reverse the decision appealed from, the same is AFFIRMED en toto and the instant appeal DISMISSED for lack of merit.[26]

It likewise denied respondent's Motion for Reconsideration of the Resolution on 21 February 2002.[27]

Before the Court of Appeals, respondent sought the annulment of the Commission's Resolution dated 29 June 2001 and Order dated 21 February 2002 on the ground that they were rendered with grave abuse of discretion and/or without or in excess of jurisdiction.[28]

The Court of Appeals found for the respondent and reversed the findings of the Commission. The dispositive portion of its Decision dated 18 March 2004 reads:

WHEREFORE, the petition is GRANTED. In lieu of the assailed Resolution and Order of the respondent NLRC, a NEW DECISION is hereby rendered declaring petitioner Diosdado Bitara, Jr. to have been Illegally Dismissed and, thus, entitled to the following:

- Reinstatement or if no longer feasible, Separation Pay to be computed from the commencement of his employment in August 1988 up to the time of his termination on April 1, 2000, including his imputed service from April 1, 2000 until the finality of this decision, based on the salary rate prevailing at the said finality;
- Backwages, inclusive of allowances and other benefits, computed from April 1, 2000 up to the finality of this decision, without qualification or deduction; and
- 5-day Service Incentive Leave Pay for every year of service from the commencement of his employment in August 1988 up to its termination on April 1, 2000.[29]

On 10 May 2005, the Court of Appeals denied respondent's Motion for Reconsideration of the decision for lack of merit. [30]

Hence, the instant petition.[31]

Issue

The core issue in this case is whether or not the Court of Appeals correctly found that the Commission acted without and/or in excess of jurisdiction and with grave abuse of discretion amounting to lack or excess of jurisdiction (a) in upholding the termination of respondent's employment and (b) in affirming the denial of his claim for non-payment of holiday pay, service incentive leave pay, moral and exemplary damages.

Our Ruling

The petition is meritorious.

The special civil action for certiorari seeks to correct errors of jurisdiction and not errors of judgment.[32]

xxx The *raison d'être* for the rule is when a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error is committed. If it did, every error committed by a court would deprive it of its jurisdiction and every erroneous judgment would be a void judgment. xxx Hence, where the issue or question involved affects the wisdom or legal soundness of the decision – not the jurisdiction of the court to render said decision – the same is beyond the province of a special civil action for certiorari. xxx[33]

xxx [J]udicial review does not go as far as to evaluate the sufficiency of evidence upon which the Labor Arbiter and NLRC based their determinations, the inquiry being limited essentially to whether or not said public respondents had acted without or in excess of its jurisdiction or with grave abuse of discretion.[34] The said rule directs us to merely determine whether there is basis established on record to support the findings of a tribunal and such findings meet the required quantum of proof, which in this case, is substantial evidence. Our deference to the expertise acquired by quasi-judicial agencies and the limited scope granted to us in the exercise of certiorari jurisdiction restrain us from going so far as to probe into the correctness of a tribunal's evaluation of evidence, unless there is palpable mistake and complete disregard thereof in which case certiorari would be proper.[35]

It is on the alleged lack of substantial evidence that the Court of Appeals found for the respondents, thereby reversing the decision of the Commission.

We hold otherwise.

Upon examination of the documents presented by the parties, we are convinced that the finding of facts on which the conclusions of the Commission and the Labor Arbiter were based was actually supported by substantial evidence – “that amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.”[36] (Emphasis supplied.)

I

In order to validly dismiss an employee, the employer is required to observe both substantive and procedural aspects – the termination of employment must be based on a just or authorized cause of dismissal and the dismissal must be effected after due notice and hearing.[37]

Substantive Due Process

We cannot agree with the Court of Appeals that the sole basis of the termination of respondent's employment was his absences from March 11-16, 2000.

Indeed, the Notice to Explain³⁸ clearly stated:

We are seriously considering your termination from service, and for this reason you are directed to submit a written explanation, within seventy-two hours from your receipt of this notice, why you should not be terminated from service for failure to report for work without verbal or written notice or permission on March 11, 13, 14, 15 and 16, 2000. xxx (Emphasis supplied.)

To give full meaning and substance to the Notice to Explain, however, the paragraph should be read together with its preceding paragraph, to wit:

We have time and again, verbally and formally, called your attention to your negligence from your tardiness and your frequent absences without any notice but still, you remain to ignore our reminder. As you know, we are in need of a regular driver and your action greatly affected the operation of our company. (Emphasis supplied.)

Necessarily, he was considered for termination of employment because of his previous infractions capped by his recent unauthorized absences from March 11-16, 2000.

That the recent absences were unauthorized were satisfactorily established by petitioners. Two (2) employees of the company belied the claim of respondent's wife Mary Ann Bitara that she called the office on 11 March 2000, and, through a certain Delia, as allegedly later identified by respondent, informed petitioners that her husband

would take a leave of absence for a week because he went to the province.[39]

Delia Abalos, a “binder/finisher” of the company, stated in her Affidavit that she never received a call from respondent nor his wife regarding his absences from March 11-16 and 17-23 during the month of March 2000.[40] On the other hand, Ritchie Distor, a messenger of the company, narrated in his Affidavit that, upon instruction of the Management, he went to respondent’s house on 13 March 2000 to require him to report for work. Instead of relaying the message to him, as respondent would have it, the wife informed him that respondent had already left the house but that she did not know where he was going.[41]

The Court of Appeals relied heavily on our ruling in *Stellar Industrial Services, Inc. vs. NLRC*,[42] which is not on all fours with the present case. In that case, the employer dismissed respondent for non-observance of company rules and regulations. On the basis of the facts presented, this Court honored the questioned medical certificate justifying the absences he incurred. It further ratiocinated:

xxx [P]rivate respondent’s absences, as already discussed, were incurred with due notice and compliance with company rules and he had not thereby committed a “similar offense” as those he had committed in the past [to wit: gambling, for which he was preventively suspended; habitual tardiness for which he received several warnings; and violation of company rules for carrying three sacks of rice, for which he was required to explain.] xxx To refer to those earlier violations as added grounds for dismissing him is doubly unfair to private respondent.[43] (Emphasis supplied.)

In the present case, however, petitioners have repeatedly called the attention of respondent concerning his habitual tardiness. The Memorandum dated 23 June 1999 of petitioner Cheng required him to explain his tardiness. Also in connection with a similar infraction, respondent even wrote petitioner Cheng a letter dated 29 November 1999 where he admitted that his tardiness has affected the delivery schedules of the company, offered an apology, and undertook to henceforth report for duty on time. Despite this undertaking, he continued to either absent himself from work or report late during the first quarter of 2000.

We, therefore, agree with the Labor Arbiter’s findings, to wit:

The imputed absence and tardiness of the complainant are documented. He faltered on his attendance 38 times of the 66 working days. His last absences on 11, 13, 14, 15 and 16 March 2000 were undertaken without even notice/permission from management. These attendance delinquencies may be characterized as habitual and are sufficient justifications to terminate the complainant’s employment.[44]

On this score, *Valiao v. Court of Appeals*[45] is instructive:

xxx It bears stressing that petitioner’s absences and tardiness were not isolated incidents but manifested a pattern of habituality. xxx The totality of infractions or the number of violations committed during the period of employment shall be considered in determining the penalty to be imposed upon an erring employee. The offenses committed by him should not be taken singly and separately but in their totality. Fitness for continued employment cannot be compartmentalized into tight little cubicles of aspects of character, conduct, and ability separate and independent of each other.[46]

There is likewise no merit in the observation of the Court of Appeals that the petitioners themselves are not certain of the official time of their employees after pointing out the seeming inconsistencies between the statement of the petitioners that “there is no need for written rules since even the [respondent] is aware that his job starts from 8 am to 5 pm”[47] and its Memorandum of 23 June 1999, where it was mentioned that respondent’s official time was from 8:30 a.m. to 5:30 p.m. On the contrary, it was clearly stated in the Memorandum that the Management adjusted his official time from 8:00 a.m. to 5:00 p.m. to 8:30 a.m. to 5:30 p.m. to hopefully solve the problem on his tardiness.⁴⁸

Neither is there basis to hold that the company tolerates the offsetting of undertime with overtime services. The Weekly Time Record relied upon by respondent does not conclusively confirm the alleged practice.

In *Valiao*,^[49] we defined gross negligence as “want of care in the performance of one’s duties”^[50] and habitual neglect as “repeated failure to perform one’s duties for a period of time, depending upon the circumstances.”⁵¹ These are not overly technical terms, which, in the first place, are expressly sanctioned by the Labor Code of the Philippines, to wit:

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

(a) xxx

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

xxx

Clearly, even in the absence of a written company rule defining gross and habitual neglect of duties, respondent’s omissions qualify as such warranting his dismissal from the service.

We cannot simply tolerate injustice to employers if only to protect the welfare of undeserving employees. As aptly put by then Associate Justice Leonardo A. Quisumbing:

Needless to say, so irresponsible an employee like petitioner does not deserve a place in the workplace, and it is within the management’s prerogative xxx to terminate his employment. Even as the law is solicitous of the welfare of employees, it must also protect the rights of an employer to exercise what are clearly management prerogatives. As long as the company’s exercise of those rights and prerogative is in good faith to advance its interest and not for the purpose of defeating or circumventing the rights of employees under the laws or valid agreements, such exercise will be upheld.^[52]

And, in the words of then Associate Justice Ma. Alicia Austria-Martinez in *Philippine Long Distance and Telephone Company, Inc. v. Balbastro*:^[53]

While it is true that compassion and human consideration should guide the disposition of cases involving termination of employment since it affects one’s source or means of livelihood, it should not be overlooked that the benefits accorded to labor do not include compelling an employer to retain the services of an employee who has been shown to be a gross liability to the employer. The law in protecting the rights of the employees authorizes neither oppression nor self-destruction of the employer.^[54] It should be made clear that when the law tilts the scale of justice in favor of labor, it is but a recognition of the inherent economic inequality between labor and management. The intent is to balance the scale of justice; to put the two parties on relatively equal positions. There may be cases where the circumstances warrant favoring labor over the interests of management but never should the scale be so tilted if the result is an injustice to the employer. *Justitia nemini neganda est* (Justice is to be denied to none).^[55]

Procedural Due Process

Procedural due process entails compliance with the two-notice rule in dismissing an employee, to wit: (1) the employer must inform the employee of the specific acts or omissions for which his dismissal is sought; and (2) after the employee has been given the opportunity to be heard, the employer must inform him of the decision to terminate his employment.^[56]

Respondent claimed that he was denied due process because the company did not observe the two-notice rule. He maintained that the Notice of Explanation and the Notice of Termination, both of which he allegedly refused to

sign, were never served upon him.[57]

The Court of Appeals favored respondent and ruled in this wise:

Furthermore, We believe that private respondents failed to afford petitioner due process. The allegation of private respondents that petitioner refused to sign the memoranda dated March 17 and 21, 2000 despite receipt thereof is not only lame but also implausible. First, the said allegation is self-serving and unsubstantiated. Second, a prudent employer would simply not accept such mere refusal, but would exert effort to observe the mandatory requirement of due process. We cannot accept the self-serving claim of respondents that petitioner refused to sign both memoranda. Otherwise, We would be allowing employers to do away with the mandatory twin-notice rule in the termination of employees. We find more credible the claim of petitioner that he was illegally dismissed on April 1, 2000 when the lawyer of the company informed him, without prior notice and in derogation of his right to due process, of his termination by offering him a 1-month salary as separation pay. The petitioner's immediate filing of a complaint for illegal dismissal on April 27, 2000 reinforced Our belief that petitioner was illegally dismissed and was denied due process.[58] (Emphasis in the original.)

We rule otherwise.

In *Bughaw v. Treasure Island Industrial Corporation*,[59] this Court, in verifying the veracity of the allegation that respondent refused to receive the Notice of Termination, essentially looked for the following: (1) affidavit of service stating the reason for failure to serve the notice upon the recipient; and (2) a notation to that effect, which shall be written on the notice itself.[60] Thus:

xxx Bare and vague allegations as to the manner of service and the circumstances surrounding the same would not suffice. A mere copy of the notice of termination allegedly sent by respondent to petitioner, without proof of receipt, or in the very least, actual service thereof upon petitioner, does not constitute substantial evidence. It was unilaterally prepared by the petitioner and, thus, evidently self-serving and insufficient to convince even an unreasonable mind.[61]

Davis Cheng, on the other hand, did both. First, he indicated in the notices the notation that respondent "refused to sign" together with the corresponding dates of service. Second, he executed an Affidavit dated 29 July 2000 stating that: (1) he is the General Manager of the company; (2) he personally served each notice upon respondent, when respondent went to the office/factory on 17 March 2000 and 21 March 2000, respectively; and (3) on both occasions, after reading the contents of the memoranda, respondent refused to acknowledge receipt thereof. We are, thus, convinced that the notices have been validly served.

Premises considered, we find that respondent was accorded both substantive and procedural due process.

II

As to respondent's monetary claims, petitioners did not deny respondent's entitlement to service incentive leave pay as, indeed, it is indisputable that he is entitled thereto. In *Fernandez v. NLRC*,[62] this Court elucidated:

The clear policy of the Labor Code is to grant service incentive leave pay to workers in all establishments, subject to a few exceptions. Section 2, Rule V, Book III of the Implementing Rules and Regulations[63] provides that "[e]very employee who has rendered at least one year of service shall be entitled to a yearly service incentive leave of five days with pay." Service incentive leave is a right which accrues to every employee who has served "within 12 months, whether continuous or broken reckoned from the date the employee started working, including authorized absences and paid regular holidays unless the working days in the establishment as a matter of practice or policy, or that provided in the employment contracts, is less than 12 months, in which case said period shall be considered as one year." [64] It is also "commutable to its money equivalent if not used or exhausted at the end of the year." [65] In other words, an employee who has served for

one year is entitled to it. He may use it as leave days or he may collect its monetary value. xxx[66] (Emphasis supplied.)

Be that as it may, petitioners failed to establish by evidence that respondent had already used the service incentive leave when he incurred numerous absences notwithstanding that employers have complete control over the records of the company so much so that they could easily show payment of monetary claims against them by merely presenting vouchers or payrolls,⁶⁷ or any document showing the off-setting of the payment of service incentive leave with the absences, as acknowledged by the absentee, if such is the company policy. Petitioners presented none.

We thus quote with approval the findings of the Court of Appeals on the following:

[P]rivate respondents bear the burden to prove that employees have received these benefits in accordance with law. It is incumbent upon the employer to present the necessary documents to prove such claim. Although private respondents labored to show that they paid petitioner his holiday pay, no similar effort was shown with regard to his service incentive leave pay. We do not agree with the Labor Arbiter's conclusion that petitioner's service incentive leave pay has been used up by his numerous absences, there being no proof to that effect.[68]

As to the payment of holiday pay, we are convinced that respondent had already received the same based on the cash vouchers on record.

Accordingly, we affirm the ruling of the National Labor Relations Commission that the dismissal was valid. However, respondent shall be entitled to the money equivalent of the five-day service incentive leave pay for every year of service from the commencement of his employment in August 1988 up to its termination on 1 April 2000. The Labor Arbiter shall compute the corresponding amount.

WHEREFORE, the Resolution dated 29 June 2001 and the Order dated 21 February 2002 of the National Labor Relations Commission in NLRC NCR CASE No. 027871-01 are hereby REINSTATED with the MODIFICATION that petitioners are ORDERED to pay respondent the money equivalent of the five-day service incentive leave for every year of service covering his employment period from August 1988 to 1 April 2000. This case is hereby REMANDED to the Labor Arbiter for the computation of respondent's service incentive leave pay.

SO ORDERED.

Carpio, (Chairperson), Sereno, Reyes, and Perlas-Bernabe, JJ.,[*] concur.

[*] Designated as additional member per Special Order No. 1174 dated 9 January 2012.

[1] Penned by Associate Justice Noel G. Tijam with Associate Justices Ruben T. Reyes and Edgardo P. Cruz, concurring. CA rollo, pp. 131-141.

[2] Id. at 161.

[3] Id. at 87-89 and 90-91. Resolution dated 29 June 2001 and Order dated 21 February 2002 of the First Division, National Labor Relations Commission in NLRC NCR CA No. 027871-01 both penned by Presiding Commissioner Roy V. Señeres with Commissioners Vicente S.E. Veloso and Alberto R. Quimpo, concurring.

[4] Id. at 62-64. Decision dated 21 December 2000 of Labor Arbiter Manuel P. Asuncion in NLRC NCR Case No. 04-02393-2000.

[5] Rollo, p. 13. Petition dated 29 June 2005; Id. at 73. Respondent's Position Paper dated 19 July 2000, Annex

“G” of the Petition; Id. at 65. Complainant’s Position Paper dated 20 July 2000, Annex “F” of the Petition.

[6] Id.

[7] Id. at 74. Respondent’s Position Paper [petitioner’s in the instant petition] dated 19 July 2000, Annex “G” of the Petition.

[8] Id. at 85. Respondent’s Position Paper [petitioner’s in the instant petition] dated 19 July 2000, Annex “G-12” of the Petition.

[9] Id. at 86.

[10] Id. at 82-84. Respondent’s Position Paper [petitioner’s in the instant petition] dated 19 July 2000, Annex “G-9” to “G-11” of the Petition.

[11] Id. at 74.

[12] Id. at 87. Annex “G-14” of the Petition.

[13] Id. at 89. Affidavit dated 29 July 2000, Annex “G-16” of the Petition.

[14] Id. at 88. Annex “G-15” of the Petition.

[15] Id. at 75. Respondent’s Position Paper [petitioner’s in the instant petition] dated 19 July 2000, Annex “G-2” of the Petition.

[16] CA rollo, pp. 16-17. Complaint dated 27 April 2000, Annex “C” of the Petition for Certiorari dated 3 June 2002 brought before the Court of Appeals.

[17] Id. at 17.

[18] Id. at 18-25. Position Paper [of respondent in the instant petition] dated 19 July 2000, Annex “D” of the Petition before the Court of Appeals.

[19] Id. at 19. [Note: The dates were corrected to March 11-16, 2000 in his Reply to Respondent’s Position Paper.]

[20] Id. [Note: The date was changed to 17 March 2000 in his Reply to Respondent’s Position Paper.]

[21] Id.

[22] Id. at 21 [Note: The date was corrected to 11 March 2000 in his Reply to Respondent’s Position Paper.]

[23] Id.

[24] Id. at 49-57. Reply to Respondent’s Position Paper [of respondent in the instant petition] dated 6 November 2000.

[25] Rollo, pp. 62-64. Labor Arbiter’s Decision dated 21 December 2000 in NLRC-NCR Case No. 04-02393-2000.

[26] Id. at 59. Resolution dated 29 June 2001 of the National Labor Relations Commission.

[27] CA rollo, pp. 90-91. Order dated 21 February 2002 of the National Labor Relations Commission.

[28] Id. at 2-14. Petition for Certiorari dated 3 June 2002.

[29] Rollo, pp. 44-45.

[30] *Id.* at 46.

[31] This Court resolved to dispense with the filing of the respondent's comment on the petition on account of the following circumstances:

The petition was filed on 4 July 2005 after the petitioner was granted an extension of thirty (30) days from the expiration of the reglementary period within which to file the same.

On 17 August 2005, respondent was required to COMMENT thereon. For failure to comply with the resolution, several court directives were issued culminating in the following: (a) the arrest and detention of respondent's counsel Atty. Virgilio Morales at the National Bureau of Investigation (NBI) until he has complied with the directives of this Court; (b) the release of Atty. Morales from the custody of the NBI in view of his health condition and pending receipt of respondent's comment on the former's motion to withdraw as counsel; (c) the imposition of several court fines against respondent, which respondent, nonetheless, did not pay; and (d) the numerous reiteration of the earlier directives with a warning that respondent's comments shall be deemed waived should he fail to pay the fines and file the required comments. *Id.* at 110, 117-118, 120, 123, 127, 140, 148.

After the transfer of the case to the First Division on 15 June 2010, this Court resolved to dispense with the payment of court fines and the filing of the comment on the petition by the respondent. *Id.* at 176.

[32] *China Banking Corporation v. Cebu Printing and Packaging Corporation*, G.R. No. 172880, 11 August 2010, 628 SCRA 154, 166.

[33] *Beluso v. Commission on Elections*, G.R. No. 180711, 22 June 2010, 621 SCRA 450, 457-458 citing *People v. Court of Appeals*, G.R. No. 142051, 24 February 2004, 423 SCRA 605.

[34] *Travelaire & Tours Corp. v. NLRC*, G.R. No. 131523, 20 August 1998, 294 SCRA 505, 510 citing *Ilocos Sur Electric Cooperative, Inc. v. NLRC*, 241 SCRA 36, 50 (1995).

[35] *Id.* at 510-511 citing *PMI Colleges v. NLRC*, G.R. No. 121466, 15 August 1997, 277 SCRA 462.

[36] *Caltex (Philippines), Inc. v. Agad*, G.R. No. 162017, 23 April 2010, 619 SCRA 196, 207 citing *AMA Computer College-East Rizal v. Ignacio*, G.R. No. 178520, 23 June 2009, 590 SCRA 633, further citing *Philippine Commercial Industrial Bank v. Cabrera*, G.R. No. 160368, 30 March 2005, 454 SCRA 792, 803.

[37] *Bughaw, Jr. v. Treasure Island Industrial Corporation*, G.R. No. 173151, 28 March 2008, 550 SCRA 307, 316-318 citing Articles 282 and 283 of the Labor Code of the Philippines and *Challenge Socks Corporation v. Court of Appeals*, G.R. No. 165268, 8 November 2005, 474 SCRA 356, 363-364.

[38] Rollo, p. 87. Memorandum dated 17 March 2000 issued by Davis Cheng.

[39] *Id.* at 107-108. Affidavits both dated 15 August 2000 of Delia Abalos and Ritchie Distor. *Id.* at 103. Affidavit dated 9 November 2000 of Mary Ann Bitara.

[40] *Id.* at 108.

[41] *Id.* at 107.

[42] 322 Phil. 352 (1996).

[43] *Id.* at 364-365.

[44] Rollo, pp. 63-64. Decision dated 21 December 2000 in NLRC-NCR Case No. 04-2393-2000.

[45] 479 Phi. 459 (2004).

- [46] Id. at 470-471 citing *National Service Corporation v. Leogardo, Jr.*, No. L-64296, 20 July 1984, 130 SCRA 502, 509.
- [47] Rollo, p. 41. Decision dated 18 March 2004 in CA-G.R. SP No. 70965.
- [48] Id. at 85. Memorandum dated 23 June 1999.
- [49] *Valiao v. CA, et al.*, supra note 45.
- [50] Id. at 469.
- [51] Id. citing *JGB and Associates, Inc. v. NLRC*, G.R. No. 109390, 7 March 1996, 254 SCRA 457, 463.
- [52] Id. at 471 citing *Maya Farms Employees Organization v. NLRC*, G.R. No. 106256, 28 December 1994, 239 SCRA 508, 515.
- [53] G.R. No. 157202, 28 March 2007, 519 SCRA 233.
- [54] Id. at 248 citing *Philippine Geothermal, Inc. v. National Labor Relations Commission*, G.R. No. 106370, September 8, 1994, 236 SCRA 371, 378-379 further citing *Pacific Mills, Inc. v. Alonzo*, G.R. No. 78090, July 26, 1991, 199 SCRA 617, 622.
- [55] Id. at 248-249 citing *Philippine Geothermal, Inc. v. National Labor Relations Commission*, id. at 379.
- [56] *Bughaw, Jr. v. Treasure Island Industrial Corporation*, supra note 37 at 320-321 citing *Pastor Austria v. National Labor Relations Commissions*, 371 Phil 340, 357 (1999).
- [57] CA rollo, p. 52. Reply to Respondents' Position Paper in NLRC-NCR Case No. 00-04-02393- 2000.
- [58] Rollo, pp. 42-43. Decision dated 18 March 2004 in CA-G.R. SP No. 70965.
- [59] Supra note 37.
- [60] Id. at 321.
- [61] Id. at 322.
- [62] G.R. No. 105892, 28 January 1998, 285 SCRA 149.
- [63] Id. at 175.
- [64] Id. citing Section 3, Rule V, Book III, Implementing Rules and Regulations of the Labor Code.
- [65] Id. citing Section 5, Rule V, Book III, Implementing Rules and Regulations of the Labor Code.
- [66] Id.
- [67] *Exodus International Construction Corporation v. Guillermo Biscocho*, G.R. No. 166109, 23 February 2011.
- [68] Rollo, pp. 43-44. Decision dated 18 March 2004 in CA-G.R. SP No. 70965.

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