

AVELINO BACHILLER, PETITIONER, VS. THE NATIONAL LABOR RELATIONS COMMISSION, HON. M. LUCAS IN HIS CAPACITY AS LABOR ARBITER, AND CANDYMAN, INCORPORATED, RESPONDENTS.

G.R. No. 51484. June 25, 1980

Ponente: DE CASTRO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-51484/>

DE CASTRO, J.:

Petition for certiorari with prayer to set aside the resolution of the National Labor Relations Commission dated May 28, 1979 and to modify the decision of the Labor Arbiter dated April 12, 1978, so as to include back wages.

Petitioner was employed with respondent Candyman, Incorporated (Company for brevity) on August 20, 1969 as machine operator. On April 2, 1977, petitioner was caught sleeping by his supervisor while on duty. He was charged for the alleged offense of sleeping on the job, and when he tried to protest, he was also charged of being disrespectful towards his supervisor. When the incident was reported to the manager, the latter endorsed the same to the Company's legal officer who proposed to petitioner to execute a promissory note to the effect of not repeating the same offense. Petitioner rejected the offer and insisted in his innocence. For this reason, the company was compelled to place petitioner under preventive suspension leading to termination.

On April 25, 1977, the Company filed an application for clearance to terminate the services of petitioner[1] effective as of that date, on the ground of sleeping during working hours and disrespect towards superior.

On August 12, 1977, petitioner lodged a complaint for illegal dismissal which was certified to the Labor Arbiter for resolution. He alleged that he was dismissed without just cause since the requirement of a clearance ten (10) days before termination was not complied with.[2] The Company claims that its initial intention was to warn petitioner but when the latter refused to sign a letter of admission, it was forced to file the clearance application belatedly. The Labor Arbiter ruled that it is highly unjust to impose the severe penalty of dismissal, and that suspension would be sufficient for the offense committed. It therefore, ordered the company to reinstate petitioner, without backwages.[3]

Not satisfied with the arbiter's decision, petitioner appealed to the Commission which dismissed the appeal for lack of merit.[4] A motion for reconsideration of the Commission's resolution was likewise denied. Whereupon, petitioner filed the instant petition raising the following issues:

- Whether or not the decision dated April 12, 1978 not awarding backwages is legal; and
- Whether or not the resolution dated August 22, 1979 is lawful.

Petitioner averred that he was terminated without the requisite prior clearance, and such dismissal was conclusively presumed to be termination of employment without just cause. Petitioner further alleged that a study of the application for clearance will reveal that it fails to state that petitioner was under preventive suspension, contrary to the provision of the Labor Code that the application shall also state whether the employees involved are under preventive suspension. Petitioner's contention is well taken.

The Company's evidence showed that petitioner refused to sign a letter of admission and thereafter he left the job. Petitioner countered that if this were true, the application for clearance should have included "abandonment" as another ground for termination. Petitioner was reinstated on June 15, 1978, but he contends that he is entitled to backwages in view of the provision of the Labor Code that "any preventive suspension before the filing of the application shall be considered work days and shall be duly paid as such." [5]

For lack of the requisite prior clearance from the Ministry of Labor, petitioner was illegally dismissed on April 25, 1977. The act of the Company in thus dismissing petitioner from the service is, therefore, unjustified, arbitrary, and without just cause. To dismiss or lay-off an employee is management's prerogative, but it must be done without abuse of discretion, for what is at stake is not only petitioner's position but also his means of livelihood. We are in accord with the ruling of the Labor Arbiter that dismissal is a severe penalty, and suspension is deemed sufficient for the offense committed, considering the number of years petitioner had stayed with the Company. We likewise uphold the action taken by the Company in suspending petitioner as a proper disciplinary measure, but it is noteworthy to state that respondent company failed to temper with fairness and equity its prerogative of dismissing petitioner for the acts with which he was charged.

Petitioner is, accordingly, entitled to backwages computed from the date of his dismissal up to the time of his reinstatement. Backwages are what an employee has lost "in the way of wages due to dismissal," the amount which he lost daily by reason of his dismissal. [6] Furthermore, it is the obligation of the employer to pay an illegally dismissed employee or worker the whole amount of the salaries or wages, plus all other benefits to which he would have been normally entitled. [7]

WHEREFORE, premises considered, the resolution dated May 28, 1979 is hereby set aside, and the decision dated April 12, 1978 of the Labor Arbiter is hereby modified by ordering respondent company to pay petitioner backwages for four months, considering the circumstances. This decision is immediately executory.

Without Costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Fernandez, and Guerrero, JJ., concur.
Melencio-Herrera, J., took no part.

[1] Annex "B" to the Petition, p. 18, Rollo.

[2] Sec. 3. Application for clearance. - Any application for clearance to shut down or to dismiss employees shall be filed with the Regional Office having jurisdiction over the place of employment at least ten (10) days before the intended shutdown or dismissal x x x. (Rule XIV, Book V, Labor Code of the Philippines)

[3] Decision dated April 12, 1978, p. 19, Rollo.

[4] NLRC resolution, p. 22, Rollo.

[5] Re: Preventive Suspension. (Sec. 4, Rule XIV, Book V, Labor Code of the Philippines)

[6] Lexal Laboratories, et al., vs. CIR, et al., 25 SCRA 668.

[7] Cruz vs. PAFLU, 42 SCRA 69; East Asiatic Company Ltd. vs. CIR, 40 SCRA 547.

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.