

**PHILIPPINE DAILY EXPRESS PUBLISHING CORPORATION,
PETITIONER, VS. BLAS F. OPLE, MINISTER OF LABOR AND
EMPLOYMENT; FRANCISCO L. ESTRELLA, DIRECTOR, NATIONAL
CAPITAL REGION, MINIST...**

G.R. No. 56339. January 31, 1984

Ponente: AQUINO, J.

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AQUINO, J.:

This case is about the dismissal of employees for their alleged fraudulent use of company property in performing outside work for compensation.

Edgardo Martin, 46, was a color separator of the Philippines Daily Express Corporation, having worked for the company for more than six years. Ramon Reyes, Jr., 31, was a circulation field representative, having been employed by the company for nearly five years.

On April 9, 1979, Reyes, without the requisite job order, handed to Martin a "transparency" to be color separated for the Panday Magazine. Three days later, Martin turned over the finished color-separated negatives to Reyes. On April 28, Reyes gave Martin two hundred pesos as partial payment for the negatives.

On May 4, 1979, Santos Diaz, Jr., the acting production director of the company, was informed by a disinterested party of the unauthorized color separation made by Martin in connivance with Reyes. Four days later, or on May 8, Martin returned the P200 to Moises Diaz, Jr., the commercial press account manager of the company.

The matter was investigated by the personnel office. Martin and Reyes submitted their statements. They were found guilty of violating Item B(7) of the company's code of offenses which states:

"Obtaining company owned materials/properties on fraudulent orders. This will include collusion with persons who are in charge of such materials/properties 1st offense - Dismissal".

On June 21, Martin and Reyes were placed under preven-tive suspension on the ground that their continued presence inside the company's premises would disrupt its business and pose an imminent danger to its property.

On July 9, the company filed with the Regional Office No. IV of the Ministry of Labor and Employment an application for clearance to terminate the services of Martin and Reyes. The latter and the union opposed the clearance application. Although they admit their participation in the unauthorized job, they submit that they do not deserve to be dismissed.

The Regional Director in his decision dated November 15, 1979 held that the two employees should be reinstated with backwages because they only performed an unauthorized job and are simply guilty of Item B(3) of the company's code of offenses which states:

"Using company materials, company property or com-pany time to perform unauthorized work. 1st offense
One week suspension".

On appeal, the Minister of Labor and Employment Blas F. Ople, in his resolution of January 15, 1981, affirmed the Regional Director's decision with the modification that one week's pay should be deducted from the backwages awarded to Martin and Reyes as the penalty.

The company brought the case to this Court by means, of certiorari. It contends that Martin and Reyes, Jr. should be dismissed because they committed fraud when they accepted work from a third party, a company client, failed to report the same to the company, did the work on company time using company equipment and materials and received compensation therefor.

We hold that, considering the relevant facts, particularly the immediate return of the P200, the ends of justice would be served by reinstating the two employees without backwages (See *San Miguel Corporation vs. National Labor Relations Commission*, G. R. No. 56554, July 20, 1982, 115 SCRA 329 and *San Miguel Corporation vs. Secretary of Labor*, L-39195, May 16, 1975, 64 SCRA 56, 62 and cases cited therein).

The order of Minister Ople is modified accordingly. No costs.

SO ORDERED.

Makasiar, (Chairman), Guerrero, Abad Santos, De Castro, and Escolin, JJ., concur.

Concepcion, Jr., J., no part.

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